71.

SUPREME COURT OF THE UNITED STATES.

No. 124.

MATTHIAS BRUEN, PLAINTIFF IN ERROR,

vs.

JAMES C. C. BELL AND ROBERT GRANT.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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J. & G. S. Gideon, printers.

A.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges
[L. S.] of the circuit court of the United States for the southern district of New York, in the second circuit, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between James C. C. Bell and Robert Grant, plaintiffs, and Matthias Bruen, defendant, a manifest error hath happened, to the great damage of the said defendant, as is said, and as appears by his complaint. We being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the sixty-ninth.

ALEX'R GARDINER,
Clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit.

B.

The answer of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, in the within writ mentioned.

The record and proceedings, whereof mention is within made, with all things concerning the same, are hereby respectfully sent to the Supreme Court of the United States, within mentioned, in certain schedules hereunto annexed, as within it is commanded.

Witness the honorable Roger B. Taney, chief justice of the Su-
[L. S.] preme Court of the United States, this fifth day of December, in the year one thousand eight hundred and forty-five.

ALEX'R GARDINER, *Clerk.*

C.

By the honorable Samuel Nelson, esquire, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, to James C. C. Bell and Robert Grant.

Whereas Matthias Bruen lately issued out of the Supreme Court of the United States a writ of error, directed to the judges of the circuit court of the United States for the southern district of New York, in the second circuit, stating, that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judges thereof, between the said James C. C. Bell and Robert Grant, plaintiffs, and the said Matthias Bruen, defendant, a manifest error hath happened, to the great damage of the said Matthias Bruen.

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the first Monday of December next, you are therefore hereby cited to appear before the said Supreme Court, at the said city of Washington, on the said *second* Monday of *January* next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 29th day of November, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the seventieth.

S. NELSON.

Service admitted. D. LORD,
For defendants in error.

D.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, Alexander Gardiner, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern [L. S.] district of New York, in the second circuit, this fifth day of December, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the said United States the seventieth. ALEX'R GARDINER, *Clerk*.

E.

In the circuit court of the United States for the southern district of New York.

Pleas in the circuit court of the United States for the southern district

of New York, held at the city hall, in the city of New York, in the said district, before the judges of the said court, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and forty-three.

Witness, Roger B. Taney, esq'r, chief justice of the Supreme Court of the United States.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. C. Bell and Robert Grant, aliens, put in their place Daniel Lord, jr., their attorney, against Matthias Bruen, a citizen of the State of New Jersey, in a plea of trespass on the case upon promises.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Matthias Bruen, a citizen of the State of New Jersey, puts in his place George W. Strong, his attorney, at the suit of James C. C. Bell and Robert Grant, of the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that heretofore, to wit, on the ninth day of December, of November term, in the year of our Lord one thousand eight hundred and thirty-nine, in the circuit court of the United States for the southern district of New York, holden at the city hall, in the city of New York, in the said district, before the judges of the same court, came James C. C. Bell and Robert Grant, aliens, by Daniel Lord, jr., their attorney, and bring into the said court, now here, before the aforesaid judges thereof, their certain bill against Matthias Bruen, a citizen of the State of New Jersey, being in custody, &c., &c., of a plea of trespass on the case upon promises; and there are pledges for the prosecution thereof, to wit, John Doe and Richard Roe, which said bill follows in these words, that is to say:

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. C. Bell and Robert Grant, aliens, subjects of the Queen of the United Kingdom of Great Britain and Ireland, plaintiffs, by Daniel Lord, jun'r, their attorney, complain of Matthias Bruen, a citizen of the State of New Jersey, defendant, being in custody, &c., for that whereas the said plaintiffs, at the several times hereinafter mentioned, were aliens as aforesaid, and traded at London, in England, in copartnership, under the firm of Bell & Grant; and the defendant was citizen as aforesaid, to wit, at the city of New York, in the southern district of New York.

And whereas, heretofore, to wit, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and thirty-one, the said defendant, by a certain letter in writing, by him subscribed, and addressed to the said plaintiffs, at London, and to them delivered, reciting therein that one William H. Thorne had informed him, the said defendant, that he, the said William H. Thorn, had had a credit for two thousand pounds given by them, the said plaintiffs, in his favor, with a certain firm of Archias & Co., to give facilities to the business

of the said William H. Thorne, at Marseilles, and expressing the defendant's obligation to the plaintiffs for the continuation of their friendship to the said William H. Thorne; he, the said defendant, did, in the said letter, further promise, that they might consider that, as well as any and every credit they might open in favor of him, the said William H. Thorne, as under the guaranty of him, the said defendant, to wit, at the city of New York aforesaid.

And the said plaintiffs aver, that afterwards and forthwith, upon the reception of the said letter of the said defendant, to wit, on the fourteenth day of June in the year last aforesaid, the said plaintiffs gave to the said defendant notice that they had received the said letter of guaranty, and should confide therein, to wit, at the city of New York aforesaid.

And the said plaintiffs further aver, that confiding in the said letter of guaranty of the said defendant, and relying on the same, they acted and continued to act thereon, from the said date of the said letter of guaranty, until the opening of the credits hereinafter more particularly mentioned, by opening credits in favor of the said William H. Thorne from time to time, during the whole of the said periods, without any revocation or withdrawal by the said defendant of his said guaranty, to wit, at the city of New York aforesaid.

And the said plaintiffs further say, that after the reception of the said letter of guaranty, and while the same remained in full force, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and thirty-six, thus the plaintiffs were requested by the said William H. Thorne to open a credit in his favor, authorizing certain persons, trading under the firm of LeCane and Echicopar, to draw on the said plaintiffs to the extent of two thousand five hundred pounds sterling; and that thereupon the said plaintiffs, confiding in the said letter of guaranty, opened such credit according to such last mentioned request, to wit, on the day and year and at the place last aforesaid; and thereupon the said LeCane and Echicopar, under the said credit so opened as last aforesaid, drew their certain bill of exchange, bearing date at Cadiz, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and thirty-six, and addressed the same to the said plaintiffs, requesting them at usance and a half to pay to the order of themselves, the said drawers, three hundred and eighty-five pounds sterling, value per commissary, and to place the same to the account of W. H. T., (the said William H. Thorne meaning,) and then and there negotiated the said bill of exchange in the usual course of trade; which bill of exchange the said plaintiffs on sight thereof accepted, and on the maturity thereof, to wit, on the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and thirty-seven, out of their own proper monies paid.

And the said LeCane and Echicopar, under the said credit so opened as aforesaid, drew their three certain other several bills of exchange, all addressed to the said plaintiffs; by one of which last mentioned bills of exchange, bearing date at Cadiz, the tenth day of October, in the

A.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges
[L. S.] of the circuit court of the United States for the southern district of New York, in the second circuit, greeting:

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Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the sixty-ninth.

ALEX'R GARDINER,
Clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit.

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And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated term of the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, on the first Monday of December next, you are therefore hereby cited to appear before the said Supreme Court, at the said city of Washington, on the said *second* Monday of *January* next, to do and receive what may appertain to justice to be done in the premises.

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S. NELSON.

Service admitted.

D. LORD,
For defendants in error.

D.

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Southern district of New York, ss:

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In the circuit court of the United States for the southern district of New York.

Pleas in the circuit court of the United States for the southern district

of New York, held at the city hall, in the city of New York, in the said district, before the judges of the said court, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and forty-three.

Witness, Roger B. Taney, esq'r, chief justice of the Supreme Court of the United States.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. C. Bell and Robert Grant, aliens, put in their place Daniel Lord, jr., their attorney, against Matthias Bruen, a citizen of the State of New Jersey, in a plea of trespass on the case upon promises.

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Matthias Bruen, a citizen of the State of New Jersey, puts in his place George W. Strong, his attorney, at the suit of James C. C. Bell and Robert Grant, of the plea aforesaid.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

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And whereas, heretofore, to wit, on the twenty-third day of April, in the year of our Lord one thousand eight hundred and thirty-one, the said defendant, by a certain letter in writing, by him subscribed, and addressed to the said plaintiffs, at London, and to them delivered, reciting therein that one William H. Thorne had informed him, the said defendant, that he, the said William H. Thorn, had had a credit for two thousand pounds given by them, the said plaintiffs, in his favor, with a certain firm of Archias & Co., to give facilities to the business

of the said William H. Thorne, at Marseilles, and expressing the defendant's obligation to the plaintiffs for the continuation of their friendship to the said William H. Thorne; he, the said defendant, did, in the said letter, further promise, that they might consider that, as well as any and every credit they might open in favor of him, the said William H. Thorne, as under the guaranty of him, the said defendant, to wit, at the city of New York aforesaid.

And the said plaintiffs aver, that afterwards and forthwith, upon the reception of the said letter of the said defendant, to wit, on the fourteenth day of June in the year last aforesaid, the said plaintiffs gave to the said defendant notice that they had received the said letter of guaranty, and should confide therein, to wit, at the city of New York aforesaid.

And the said plaintiffs further aver, that confiding in the said letter of guaranty of the said defendant, and relying on the same, they acted and continued to act thereon, from the said date of the said letter of guaranty, until the opening of the credits hereinafter more particularly mentioned, by opening credits in favor of the said William H. Thorne from time to time, during the whole of the said periods, without any revocation or withdrawal by the said defendant of his said guaranty, to wit, at the city of New York aforesaid.

And the said plaintiffs further say, that after the reception of the said letter of guaranty, and while the same remained in full force, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and thirty-six, thus the plaintiffs were requested by the said William H. Thorne to open a credit in his favor, authorizing certain persons, trading under the firm of LeCane and Echicopar, to draw on the said plaintiffs to the extent of two thousand five hundred pounds sterling; and that thereupon the said plaintiffs, confiding in the said letter of guaranty, opened such credit according to such last mentioned request, to wit, on the day and year and at the place last aforesaid; and thereupon the said LeCane and Echicopar, under the said credit so opened as last aforesaid, drew their certain bill of exchange, bearing date at Cadiz, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and thirty-six, and addressed the same to the said plaintiffs, requesting them at usance and a half to pay to the order of themselves, the said drawers, three hundred and eighty-five pounds sterling, value per commissary, and to place the same to the account of W. H. T., (the said William H. Thorne meaning,) and then and there negotiated the said bill of exchange in the usual course of trade; which bill of exchange the said plaintiffs on sight thereof accepted, and on the maturity thereof, to wit, on the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and thirty-seven, out of their own proper monies paid.

And the said LeCane and Echicopar, under the said credit so opened as aforesaid, drew their three certain other several bills of exchange, all addressed to the said plaintiffs; by one of which last mentioned bills of exchange, bearing date at Cadiz, the tenth day of October, in the

year of our Lord one thousand eight hundred and thirty-six, the said LeCane and Echicopar requested the plaintiffs, at usance and a half, to pay to the order of themselves, the drawers, three hundred and sixty-nine pounds sterling, value per the ship Henry, and to place the same to the account of W. H. T., (the said William H. Thorne meaning;) by another of which last mentioned three bills of exchange, bearing date at Cadiz, the seventeenth day of October, in the year last aforesaid, the said LeCane and Echicopar requested the said plaintiffs, at usance and a half, to pay to their, the said drawers' order, the sum of three hundred and sixty-seven pounds eleven shillings and seven pence sterling, value per Henry, which place to the account of W. H. T., (the said William H. Thorne meaning;) and by the other of which last mentioned three bills of exchange, bearing date at Cadiz, the seventeenth day of October, in the year last aforesaid, the said LeCane and Echicopar requested the said plaintiffs, at usance and a half, to pay to their, the said drawers' order, the sum of two hundred and fifty pounds sterling, value per Henry, and to place the same to account of W. H. T., (the said William H. Thorne meaning;) and the said LeCane and Echicopar then and there, to wit, at the several dates in the said three last mentioned bills expressed, negotiated the same in the course of trade; and which three said bills the said plaintiffs at sight thereof accepted; and afterwards, upon the maturity thereof, out of their own proper monies paid, to wit, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and thirty-seven.

And the said plaintiffs further say, that after the reception of the said letter of guaranty, and while the same remained in full force, and before the commencement of this suit, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and thirty-four, the said plaintiffs were requested by the said William H. Thorne to open another credit for his account, to certain persons trading together at Marseilles, under the firm of Archias & Co., to the amount of four thousand pounds sterling; and thereupon afterwards, to wit, on the same day and year, and at London aforesaid, the said plaintiffs, confiding in the said letter of guaranty of the defendant, opened such last mentioned credit according to the said last mentioned request; and thereupon the said persons, trading under the said firm of Archias & Co., drew a certain bill of exchange at Marseilles, bearing date the twenty-fifth day of October, in the year of our Lord one thousand eight hundred and thirty-six, and thereby requested the said plaintiffs, ninety days after date thereof, to pay to the order of themselves, the said drawers, five hundred pounds sterling, value in themselves, and charge the same to the account of the said W. H. T., (the said William H. Thorne meaning,) as per advice; which last mentioned bill of exchange the said Archias & Co. then and there negotiated in the usual course of trade, which last mentioned bill of exchange the said plaintiffs, on sight thereof, accepted; and upon maturity thereof, out of their own monies, to wit, on the twenty-eighth day of January, in the year of our Lord eighteen hundred and thirty-seven.

And the said plaintiffs further say, that after the reception of the let-

ter of guaranty first aforesaid, and while the same remained in full force, and before the commencement of this suit, to wit, on the ninth day of July, in the year of our Lord one thousand eight hundred and thirty-six, the said plaintiffs, relying on the said guaranty, at the request of the said William H. Thorne, opened another credit in favor of the said William H. Thorne for three thousand pounds sterling, for bills to be drawn thereupon by certain persons trading at Gibraltar, under the firm of Francia, Brothers & Co.; and thereupon the said persons, trading under the said firm of Francia, Brothers & Co., at Gibraltar, on the third day of October, in the said year of our Lord one thousand eight hundred and thirty-six, drew under the said last mentioned credit five several bills of exchange, dated on that day, and thereby requested the said plaintiffs, at ninety days after the respective dates of the said bills, to pay to the order of themselves, the said drawers, the several sums of money in the said last mentioned bills respectively mentioned and hereinafter next stated, value in themselves, and to place the same to account of W. H. T., (the said William H. Thorne meaning,) as per advice; which said bills last mentioned were severally drawn for the sums following, that is to say, one of the said bills was drawn for payment of the sum of nine hundred and eighty pounds sterling, one for six hundred pounds sterling, one for five hundred pounds sterling, one for five hundred pounds sterling, and the other for four hundred pounds sterling; and the said Francia, Brothers & Co., then and there negotiated the said five several bills of exchange in the usual course of trade, and the plaintiffs, upon sight thereof, accepted the said five bills of exchange; and upon maturity thereof, out of their own moneys paid, to wit, on the sixth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, at the city of New York aforesaid.

And the said plaintiffs further say, that after the reception of the said letter of guaranty, and while the same remained in full force, and before the commencement of this suit, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and thirty-four, the said plaintiffs were requested by the said William H. Thorne to open another credit for his account to certain persons trading at Gibraltar, under the name of Francia, Brothers & Co., to the extent of two thousand five hundred pounds sterling; and afterwards, to wit, on the

day of November, in the year of our Lord one thousand eight hundred and thirty-five, the said credit was by the said plaintiffs, confiding in the said guaranty, at the request of the said William H. Thorne, extended in amount to the sum of four thousand five hundred pounds; and thereupon, afterwards, on the same day and year, and at London aforesaid, the plaintiffs, confiding in the said letter of guaranty of the said defendant, opened such last mentioned credits accordingly; and thereupon, the said persons, trading under the said last mentioned firm of Francia, Brothers & Co., under the last mentioned credit, on the eleventh day of October, in the year of our Lord one thousand eight hundred and thirty-six, at Gibraltar, drew a certain other bill of exchange, whereby they requested the plaintiffs, at ninety days after date, to pay to the order of themselves, the said drawers, seven hundred pounds ster-

ling, value in themselves, and to place to account W. H. T., (the said William H. Thorne meaning,) as per advice; and the said persons, trading under the said firm of Francia, Brothers & Co., under the said last mentioned credits, on the fourteenth day of November, in the year of our Lord last aforesaid, at Gibraltar, drew a certain other bill of exchange on the plaintiffs, whereby the said Francia, Brothers & Co., requested the plaintiffs, at ninety days after date, to pay to the order of themselves, the drawers, one hundred and twenty-eight pounds and fifteen shillings sterling, value in themselves, and to place the same to account W. H. T., (the said William H. Thorne meaning,) as per advice; and the said persons, trading under the said firm of Francia, Brothers & Co., at Gibraltar, on the third day of October, in the year of our Lord one thousand eight hundred and thirty-six, under the last mentioned credits, drew five other bills of exchange for the respective sums of nine hundred and eighty pounds sterling, six hundred pounds sterling, five hundred pounds sterling, five hundred pounds sterling, and four hundred pounds sterling; by which bills, respectively, they requested the plaintiffs, at ninety days after sight, to pay to the order of themselves, the drawers, the several sums aforesaid, and to place the same to account of W. H. T., (the said William H. Thorne meaning;) and the said Francia, Brothers & Co., thereupon, afterwards, negotiated the said seven bills last mentioned according to the course of trade; and the said seven bills of exchange last mentioned were, on sight thereof, by the said plaintiffs accepted, and upon the maturity thereof, with their own monies paid, to wit, at the city of New York aforesaid.

And the said plaintiffs further say, that after the reception of the said letter of guaranty, and while the same remained in full force, and before the commencement of this suit, to wit, on the thirty-first day of October, in the year of our Lord one thousand eight hundred and thirty-four, the said plaintiffs were requested by the said William H. Thorne to open another credit for his account to certain persons trading at Gibraltar, under the firm of R. Anderson & Co., to the extent of four thousand pounds sterling; and thereupon, afterwards, to wit, at the city of New York aforesaid, the said plaintiffs, confiding in the said letter of guaranty of the said defendant, opened such last mentioned credit according to the said last mentioned request; and thereupon, the said persons, trading under the said firm of R. Anderson & Co., under the said last mentioned credit, drew a certain bill of exchange bearing date Gibraltar, the sixteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, and addressed the same to the said plaintiffs, requesting them, at ninety days after date, to pay to the order of themselves, the said drawers, three hundred and eighteen pounds twelve shillings and six pence sterling, and to place to account of W. H. T., (the said William H. Thorne meaning,) as advised; and the said R. Anderson & Co., then and there negotiated the said bill of exchange in the usual course of trade, which last mentioned bill of exchange the said plaintiffs afterwards, on sight thereof, accepted, and upon maturity thereof, out of their own monies, paid the same, to wit, on the nine-

teenth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, and at the city of New York aforesaid.

And the said plaintiffs further say, that after the reception of the said letter of guaranty, and while the same remained in full force, and before the commencement of this suit, to wit, on the fifteenth day of August, in the year of our Lord one thousand eight hundred and thirty-six, the plaintiffs were requested by the said William H. Thorne to open another credit for his account to certain persons trading at Smyrna, under the firm of Amie, Zipçey & Co., to the extent of three thousand five hundred pounds sterling; and thereupon, afterwards, to wit, on the same day and year, and at London, to wit, at the city of New York aforesaid, the said plaintiffs, confiding in the said letter of guaranty of the said defendant, opened such last mentioned credit according to the said last mentioned request; and thereupon the said persons, trading under the said firm of Amie, Zipcey & Co., under the last mentioned credit, drew two certain bills of exchange, both dated at Smyrna, the seventh day of January, in the year of our Lord one thousand eight hundred and thirty-seven, and addressed the same to the said plaintiffs, by one of which bills of exchange the said Amie, Zipcey & Co., requested the plaintiffs, sixty-one days after sight, to pay to the order of Mr. George Papasian one thousand five hundred and ninety pounds sterling, and then and there delivered that bill to the said payer thereof; and by the other of the said bills of exchange, the said Amie, Zipcey & Co., requested the plaintiffs, sixty-one days from sight, to pay to the order of Messrs. Guistiani, Spanty & Co., one hundred and forty pounds sterling, and then and there delivered the said bill to the payers thereof; and the said plaintiffs afterwards, to wit, on the seventh day of February, in the same year last aforesaid, on sight thereof, accepted the said bills of exchange, and when the same became due, with their own proper monies paid the same according to the tenor thereof, to wit, on the same day and year last aforesaid, at London, to wit, at the city and county of New York aforesaid.

And the said plaintiffs further say, that after the *exception* of the said letter of guaranty, and while the same remained in full force, and before the commencement of this suit, to wit, on the eighth day of March, in the year of our Lord one thousand eight hundred and thirty-seven, the said plaintiffs were requested by the said William H. Thorne to open a credit to him for three thousand five hundred pounds sterling; and thereupon the plaintiffs, on the same day and year, to wit, at the city of New York, confiding in the said letter of guaranty of said defendant, opened such last mentioned credit according to the last mentioned request; and thereupon one George F. Darby, acting on behalf of the plaintiffs, at the request of the said William H. Thorne, drew four certain bills of exchange under and upon the credit opened as last aforesaid, all dated at New York, on the eighth day of March, in the said year eighteen hundred and thirty-seven, and addressed to these plaintiffs, by one of which last mentioned bills, the said George F. Darby requested these plaintiffs, sixty days after sight, to pay to the order of the said William

H. Thorne, one thousand pounds sterling; by another of the said last mentioned bills, the said George F. Darby requested these plaintiffs, sixty days after sight, to pay to his own order one thousand pounds sterling, and endorsed the same; by another of the said bills of exchange, the said George F. Darby requested these plaintiffs, sixty days after sight, to pay to his own order one thousand pounds sterling, and endorsed the same; by another of the said bills of exchange, the said George F. Darby requested these plaintiffs to pay to the order of the said William H. Thorne, one thousand pounds sterling; and by the other of the last said mentioned bills of exchange, the said George F. Darby requested these plaintiffs to pay to the order of William H. Thorne five hundred pounds sterling; all of which last mentioned four bills of exchange were delivered to the said William H. Thorne, and afterwards, upon presentation to these plaintiffs, were by them accepted, and when the same respectively became due, were by them paid out of their own proper moneys, to wit, on the seventeenth day of June, in the year last aforesaid, and at London, to wit, at the city of New York aforesaid.

And these plaintiffs aver, that the said several bills of exchange, so paid as aforesaid, by these plaintiffs, in sterling money, amounted to a large sum of money, to wit, eleven thousand two hundred and forty-eight pounds nineteen shillings and one penny; of which there remained due on the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, a large sum of money, to wit, six thousand one hundred and twenty-six pounds sterling, of the value of thirty thousand dollars, lawful money of the United States, to wit, at the city of New York aforesaid.

And the plaintiffs further say, that after payment of the said several bills of exchange, they gave notice to the said William H. Thorne of the said advances and payments by them for his accounts, upon the credits so granted to him as aforesaid, to wit, on the thirty-first day of December, in the year of our Lord one thousand eight hundred and thirty-eight, at the city of New York aforesaid, and then and there requested the said William H. Thorne to pay the same; but the said William H. Thorne then and there, and at all times since, hath neglected and refused to pay the same or any part thereof; of all which said several premises, the said defendant then and there, to wit, on the same day and year, and at the place last aforesaid, had notice from the said plaintiffs; by means whereof, and according to the form and effect of the said letter of guaranty, the defendant then and there became liable to pay to the said plaintiffs the aforesaid amount of the said sums so paid by them as aforesaid. And being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place last aforesaid, undertook, and to the said plaintiffs faithfully promised, to pay the same to them, whenever he, the said defendant, should be thereunto afterwards requested. Yet the said defendant, although often requested by the plaintiffs, hath not paid the same, or any part thereof, to the said plaintiffs, but so to do hath wholly neg-

lected and refused, and still doth neglect and refuse, to the damage of the plaintiffs fifty thousand dollars; and thereof they bring suit, &c.

And now, on this day, to wit, on this twenty-eighth day of October, in this same year of our Lord one thousand eight hundred and forty-three, until which time the defendant had leave to imparle, and then to answer the same, came as well the said Matthias Bruen, by George W. Strong, his attorney, as the plaintiffs, by Daniel Lord, jr., their attorney aforesaid.

And the said defendant, by George W. Strong, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise in manner and form as the said plaintiffs have above thereof in their amended declaration complained against him, and of this he puts himself upon the country, &c.; and the said plaintiffs do the like.

And for a further plea in this behalf, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, the said defendant says, that the said plaintiffs ought not to have or maintain their aforesaid action thereof against him, because he says, that the said several supposed causes of action in the said amended declaration did not, nor did any of them, accrue to the said plaintiffs at any time within six years next before the commencement of this suit, in manner and form as the said plaintiffs have above thereof complained against him; and this he, the said defendant, is ready to verify. Wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action thereof against him, &c.

And the said plaintiffs, as to the said plea of the said defendant to the amended declaration filed herein by him firstly above pleaded; and whereof he hath put himself upon the country, do the like.

And as to the plea of the said defendant, by him secondly above pleaded, the said plaintiffs say, that the said plaintiffs, by reason of any thing by the said defendant in that plea alleged, ought not to be barred from having or maintaining their aforesaid action thereof against the said defendant, because they say that the said several causes of action, and each and every of them, did accrue within six years next before the commencement of this suit, in manner and form as the said plaintiffs have above thereof complained; and this the said plaintiffs pray may be enquired of by the country; and the said defendant doth the like, &c.

Therefore, as well to try this issue, as the said other issue above joined, let a jury thereupon come before the judges of the circuit court of the United States for the southern district of New York, at the city hall, in the city of New York, on the last Monday of November, in the year of our Lord one thousand eight hundred and forty-three, each of whom, &c., by whom, &c.; and who neither, &c.; to recognise, &c., because as well, &c.; the same day is given to the parties aforesaid there.

And because the said cause was not tried at the term and time last aforesaid, the cause between the parties aforesaid, and the said issues

joined therein, were continued until this fourth day of December, in the year of our Lord one thousand eight hundred and forty-four. At which day, before the honorable Samuel R. Betts, one of the judges of this court, at a stated term thereof, held at the city of New York, in the southern district of New York, came as well the plaintiffs as the defendant, between their respective attornies aforesaid. And the jurors of the jury, in this behalf summoned, also come, and to try the said issues are duly chosen, tried, and sworn. And the jurors aforesaid, on their oaths, do say, that the said defendant did undertake and promise in manner and form as the plaintiffs in this behalf have declared against him. And the jurors aforesaid, on their oaths aforesaid, do further say, that the several supposed causes of action in the declaration mentioned, and every of them, did accrue to the plaintiffs within six years next before the commencement of this suit. And the jurors aforesaid, on their oaths aforesaid, in respect to certain questions to them submitted by the said court, of and concerning the matters in evidence in the said cause, at the request of the plaintiff's counsel, and with the assent of the counsel for the defendant, do further say, that the guaranty of the said defendant was well executed and delivered to the said plaintiffs; that the plaintiffs did notify the said defendant that they had received the said guaranty, and should confide in and act upon it. And that the plaintiffs did act under the said guaranty, confiding in it; and that the credits were not at any time withdrawn prior to the year eighteen hundred and thirty-seven, in such a manner as to disown or invalidate the said guaranty. And that the bills of exchange in question in the said suit were accepted and paid by the said plaintiffs, confiding in the said guaranty; and that the bills drawn by G. F. Darby were included under the guaranty. And that the plaintiffs, in a reasonable time after the accounts were closed up, did notify the defendant of Thorne's default, and of the defendant's liability under the guaranty. And the jurors aforesaid, on their oaths aforesaid, further say, that they assess the damages of the plaintiffs, by reason of the non-performance of the promise of the said defendant, in respect to the credit opened by George F. Darby, acting on behalf of the plaintiffs, and to the four bills of exchange drawn by the said William H. Thorne, and bearing date the eighth day of March, in the year one thousand eight hundred and thirty-seven, in the declaration mentioned, to seventeen thousand seven hundred and sixty-eight dollars twelve cents, after crediting thereon certain debentures for paper given in evidence on part of the defendant, to which credit the said Thorne was entitled; and they assess the damages of the plaintiffs, by reason of the non-performance of the promises of the defendant, in respect of the other matters in the declaration mentioned, at twelve thousand and two dollars and ninety-four cents; in all amounting to twenty-nine thousand seven hundred and seventy-one dollars and six cents damages, besides the costs and charges of the plaintiffs in their prosecution suit in this behalf, and for those costs and charges six cents.

Therefore it is considered by the court now here, that the plaintiffs do recover against the defendant the damages aforesaid in form afore-

said assessed; and the further sum of two thousand three hundred and twenty-nine dollars and twenty-nine cents, for the costs and charges of the plaintiffs by them about their suit in this behalf expended, by the court now here adjudged of increase to the plaintiffs, and with their assent; which damages, costs, and charges, in the whole, amount to thirty-two thousand one hundred dollars and forty-one cents.

And the defendant in mercy, &c.

29,771	06	Judgment signed this 19th day of November, A.
	6	D. 1845.
396	20	costs. ALEXR. GARDINER, *Clerk*.
1,933	05	
32,100	41	

(F.)

CIRCUIT COURT OF THE UNITED STATES,

Southern district of New York, ss:

As yet of the stated term commencing on the last Monday of November, in the year of our Lord one thousand eight hundred and forty-four.

Be it remembered, that on the third day of December, of this same stated term of the circuit court of the United States, for the southern district of New York, in the second circuit, before the honorable Samuel R. Betts, district judge in said circuit court, the issues within contained joined between the within named James C. C. Bell and Robert Grant, aliens, subjects of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, plaintiffs, and Matthias Bruen, a citizen of the State of New Jersey, defendant, came on to be tried; and the parties, by their respective attornies, before the said judge came, and the jurors of the jury, in this behalf duly summoned, also come, who, to speak the truth in this behalf, are elected, tried, and sworn.

And the counsel for the plaintiffs, to maintain and prove the said issue on their behalf, gave in evidence a certain letter, admitted to be signed by the defendants, and addressed to the plaintiffs, in the words following, that is to say:

NEW YORK, 23*d April*, 1831.

Messrs. BELL & GRANT, *London*.

DEAR SIR: Our mutual friend, Mr. Wm. H. Thorne, has informed me that he has had a credit for two thousand pounds, given by you in his favor with Messrs. Archias & Co., to give facilities to his business at Marseilles.

In expressing my obligations to you for the continuation of your friendship to this gentleman, I take occasion to state, that you may consider this, as well as any and every other credit you may open in his favor, as being under my guaranty.

I am, dear sirs, your friend and servant,

M. BRUEN.

And the counsel for the plaintiffs produced a commission, which had been issued and executed in this cause, for the examination of one Oswald Alexander Schenck, a witness on the part of the plaintiffs, and read therefrom the following interrogatories, and answers thereto, of the said Oswald Alexander Schenck on such examination:

First interrogatory. What is your age, place of residence, and calling in life?

To the first interrogatory deponent saith: That his place of residence and calling in life are as immediately above described.

Second. Are you acquainted with the parties named in the title to these interrogatories, or with any of them? With which are you so acquainted, and how long have you been thus acquainted?

To the second interrogatory deponent saith: That he is acquainted with James Christian, Clement Bell, and Robert Grant, the plaintiffs named in the title to the interrogatories, or which he, deponent, is now under examination, and that he has been acquainted with them for these seventeen or eighteen years past; and that he hath known Matthias Bruen, the defendant, named in the title to the said interrogatories for about four years past, the said Matthias Bruen having, about four years since, visited London, where the deponent saw and became acquainted with him.

Third. Were you in the employment or service of Bell & Grant, of London, in the month of June, in the year of our Lord one thousand eight hundred and thirty-one, or about that time? In what capacity where you employed by them, and how long have you since continued in their employments, and in what capacity?

To the third interrogatory this deponent saith: That he was in the employment of Bell & Grant, of London, the said plaintiffs, in the month of June, one thousand eight hundred and thirty-one, in the capacity of writing and out-door clerk; and that he continued in their employment until the month of March, one thousand eight hundred and thirty-eight, part of the said time in the capacity aforesaid, and for other part, and about the last six years thereof, in the capacity of custom-house clerk.

Fourth. Have you any knowledge of the transmission of any letter from the plaintiffs to the defendant in June, in the year eighteen hundred and thirty-one, and particularly of a letter bearing date on or about the eleventh day of June of that year? If yea, declare whether any letter was written at that time by the plaintiffs, or their firm, to the defendant. Was the same forwarded, and if yea, to what address; by what conveyance or means of transmission? What was at that time the usual mode of transmitting letters from London to New York? What are the means and circumstances of your knowledge of such transmission?

To the fourth interrogatory this deponent saith: That he doth know of the transmission of a letter from the plaintiffs to the defendant, in June, in the year one thousand eight hundred and thirty-one, and which bore date the fourteenth day of June, in that year; but he doth not

know of any letter so transmitted, which bore date the eleventh day of the said month of June; and deponent saith that the said letter of the said plaintiffs to the said defendant, of the said fourteenth day of June, one thousand eight hundred and thirty-one, was written on or about the day it bears date, in duplicate; and that one part of such letter was written by one of the said plaintiffs, but which of them deponent does not now recollect; and the other part of such letter was written by deponent; and that both parts of the said letter was signed by one or other of the said plaintiffs, in the name of their firm of Bell & Grant, and were both addressed to the defendant, in New York. Deponent having seen such signature and address to each part of the said letter, and deponent saith that both parts of the said letter were, to the knowledge of deponent, forwarded at the times hereinafter mentioned, to the address "Matthias Bruen, esq., New York," by packets running between England and New York, and then about to sail, and which was, at the time, usual mode of transmitting letters from London to New York; and deponent saith that one of such parts of the said letter was enclosed in a letter, addressed by the said Bell & Grant, to "G. F. Darby, esquire, New York," and containing a request to the said G. F. Darby to deliver the said enclosed letter to the said Matthias Bruen; and that the said letter to the said G. F. Darby, with the said part of the said letter to the said Matthias Bruen, so enclosed therein, was, on or about the said fourteenth day of June, one thousand eight hundred and thirty-one, put by deponent into the ship letter bag, then lying at the North and South American Coffee House, in London, for the reception of letters for New York, by the ship or packet New York, then about to sail to New York from Liverpool.

And deponent saith, that the other part of the said letter was forwarded by deponent to the said Matthias Bruen direct; for deponent saith, that such other part of the said letter was, after being sealed, and so as aforesaid directed to the said Matthias Bruen, at New York, on or about the eighteenth day of June, one thousand eight hundred and thirty-one, put by deponent into the ship letter bag, then lying at the said North and South American Coffee House, for the reception of letters for New York by the ship or packet "President," then about to sail for New York from Portsmouth. And deponent saith, that he is enabled to depose to the facts set forth in this his deposition, to the said fourth interrogatory, not only from his general recollection of the same, but more particularly from his having made, at the time of the writing and forwarding of the said letter to the said Matthias Bruen and G F. Darby, a copy of the same respectively in the letter book of the said Messieurs Bell and Grant, and also minutes of the transmission of the said letters in the postage book kept by deponent; and to which letter book and postage book, and the said copies and minutes therein, deponent now refers.

Fifth. What were the contents of such letter or letters? Have you any copy thereof before you? How do you know it to be a copy? Produce and deliver such copy to the commissioners to be annexed to your

And the counsel for the plaintiffs produced a commission, which had been issued and executed in this cause, for the examination of one Oswald Alexander Schenck, a witness on the part of the plaintiffs, and read therefrom the following interrogatories, and answers thereto, of the said Oswald Alexander Schenck on such examination:

First interrogatory. What is your age, place of residence, and calling in life?

To the first interrogatory deponent saith: That his place of residence and calling in life are as immediately above described.

Second. Are you acquainted with the parties named in the title to these interrogatories, or with any of them? With which are you so acquainted, and how long have you been thus acquainted?

To the second interrogatory deponent saith: That he is acquainted with James Christian, Clement Bell, and Robert Grant, the plaintiffs named in the title to the interrogatories, or which he, deponent, is now under examination, and that he has been acquainted with them for these seventeen or eighteen years past; and that he hath known Matthias Bruen, the defendant, named in the title to the said interrogatories for about four years past, the said Matthias Bruen having, about four years since, visited London, where the deponent saw and became acquainted with him.

Third. Were you in the employment or service of Bell & Grant, of London, in the month of June, in the year of our Lord one thousand eight hundred and thirty-one, or about that time? In what capacity where you employed by them, and how long have you since continued in their employments, and in what capacity?

To the third interrogatory this deponent saith: That he was in the employment of Bell & Grant, of London, the said plaintiffs, in the month of June, one thousand eight hundred and thirty-one, in the capacity of writing and out-door clerk; and that he continued in their employment until the month of March, one thousand eight hundred and thirty-eight, part of the said time in the capacity aforesaid, and for other part, and about the last six years thereof, in the capacity of custom-house clerk.

Fourth. Have you any knowledge of the transmission of any letter from the plaintiffs to the defendant in June, in the year eighteen hundred and thirty-one, and particularly of a letter bearing date on or about the eleventh day of June of that year? If yea, declare whether any letter was written at that time by the plaintiffs, or their firm, to the defendant. Was the same forwarded, and if yea, to what address; by what conveyance or means of transmission? What was at that time the usual mode of transmitting letters from London to New York? What are the means and circumstances of your knowledge of such transmission?

To the fourth interrogatory this deponent saith: That he doth know of the transmission of a letter from the plaintiffs to the defendant, in June, in the year one thousand eight hundred and thirty-one, and which bore date the fourteenth day of June, in that year; but he doth not

know of any letter so transmitted, which bore date the eleventh day of the said month of June; and deponent saith that the said letter of the said plaintiffs to the said defendant, of the said fourteenth day of June, one thousand eight hundred and thirty-one, was written on or about the day it bears date, in duplicate; and that one part of such letter was written by one of the said plaintiffs, but which of them deponent does not now recollect; and the other part of such letter was written by deponent; and that both parts of the said letter was signed by one or other of the said plaintiffs, in the name of their firm of Bell & Grant, and were both addressed to the defendant, in New York. Deponent having seen such signature and address to each part of the said letter, and deponent saith that both parts of the said letter were, to the knowledge of deponent, forwarded at the times hereinafter mentioned, to the address "Matthias Bruen, esq., New York," by packets running between England and New York, and then about to sail, and which was, at the time, usual mode of transmitting letters from London to New York; and deponent saith that one of such parts of the said letter was enclosed in a letter, addressed by the said Bell & Grant, to "G. F. Darby, esquire, New York," and containing a request to the said G. F. Darby to deliver the said enclosed letter to the said Matthias Bruen; and that the said letter to the said G. F. Darby, with the said part of the said letter to the said Matthias Bruen, so enclosed therein, was, on or about the said fourteenth day of June, one thousand eight hundred and thirty-one, put by deponent into the ship letter bag, then lying at the North and South American Coffee House, in London, for the reception of letters for New York, by the ship or packet New York, then about to sail to New York from Liverpool.

And deponent saith, that the other part of the said letter was forwarded by deponent to the said Matthias Bruen direct; for deponent saith, that such other part of the said letter was, after being sealed, and so as aforesaid directed to the said Matthias Bruen, at New York, on or about the eighteenth day of June, one thousand eight hundred and thirty-one, put by deponent into the ship letter bag, then lying at the said North and South American Coffee House, for the reception of letters for New York by the ship or packet "President," then about to sail for New York from Portsmouth. And deponent saith, that he is enabled to depose to the facts set forth in this his deposition, to the said fourth interrogatory, not only from his general recollection of the same, but more particularly from his having made, at the time of the writing and forwarding of the said letter to the said Matthias Bruen and G F. Darby, a copy of the same respectively in the letter book of the said Messieurs Bell and Grant, and also minutes of the transmission of the said letters in the postage book kept by deponent; and to which letter book and postage book, and the said copies and minutes therein, deponent now refers.

Fifth. What were the contents of such letter or letters? Have you any copy thereof before you? How do you know it to be a copy? Produce and deliver such copy to the commissioners to be annexed to your

examination, and declare if the same be a true and correct copy; and if not, declare in what it varies from the original. If you do not deliver such copy to the commissioners, declare why you do not, and deliver to them a copy thereof to be annexed to your examination, and declare if that copy be authentic.

To the fifth interrogatory deponent saith: that the contents of the letter, so written and sent in duplicate to the said defendant, Matthias Bruen, as stated in deponent's deposition to the preceding interrogatory, were according to the words and figures set forth in the paper writing marked A, now exhibited by deponent to the commissioner appointed to take this his examination, and given in by deponent to the said commissioner, to be annexed to, and taken as part of, deponent's examination to this interrogatory.

And deponent further saith, that previously to the forwarding of the said two parts of the letter to the said Matthias Bruen, as stated in deponent's deposition to the preceding interrogatory, a copy of the said letter was made in the letter book of the said Bell and Grant, by deponent, as therein also stated, and deponent knows such copy to be a true copy of the said two parts of said letter, from the fact of the said copy having been so made by deponent himself; and also from the said copy having been carefully examined by deponent, with the said two parts of the said letter, before the same were respectively sealed up and despatched; and deponent saith, that the letter book which he now produces to the said commissioner is the said letter book of the said Messieurs Bell and Grant, and the copy of the letter therein written, *which* he now refers to and points out to the said commissioner, is the said copy of the said two parts of the said letter to the said Matthias Bruen, so written therein by deponent as hereinbefore stated; but deponent cannot deliver the said copy to the said commissioner to be annexed to this, deponent's examination, because the said letter book, containing the said copy, is not deponent's property; and because such letter book is of large dimensions, and the said copy cannot be extracted therefrom without mutilating other copies of other letters with, and over *which*, the same is connected and written; and deponent saith, that the paper writing marked A, so as aforesaid delivered in by him to the said commissioner, to be annexed to this his deposition to the said fifth interrogatory, is a true and correct transcript and copy of the said copy of the said two parts of the said letter to the said Matthias Bruen, so made by deponent in the said letter book as hereinbefore stated by him, and deponent declares the same to be authentic in every particular, he having carefully examined and compared the same with the said copy of the said letter so made by him in the said letter book as aforesaid.

And the plaintiffs' counsel also produced and offered to read a certain paper, therein referred to and thereto annexed, purporting to be a copy of a letter from the plaintiffs to the defendant, it being admitted by the defendant's counsel that a notice to produce the original letter had been served on the defendant's attorney; the defendant's counsel objected to the reading thereof in evidence, because it did not appear

that the original letter was in the hands of the defendant, and because the paper offered in evidence was not a copy of the original letter, but of a copy thereof, which first copy appeared, from the evidence, to be in the possession of the plaintiffs. But the court overruled the objection, and decided that the evidence was admissible, to which the defendant's counsel excepted; the said paper was then read in the words following:

LONDON, 14 *June*, 1831.

MATTHIAS BRUEN, esq., New York.

We are in receipt of your favor of the 23 April, guaranteeing the credit opened on behalf of Mr. W. H. Thorne with Messrs. Archias & Co., of Marseilles, for £2,000, for the purpose of facilitating his business with that place; and moreover, desiring us to consider as under your guarantee, also all credits existing, or that we may hereafter open for said friend, of which we take due note.

And we trust that Mr. Thorne, as well as your good self, will have every reason to be satisfied with the confidence which we feel a pleasure in assigning to both of you.

We have also been favored with your letter of the 7th May, enclosing a copy of one of the four, the original whereof we look to be delivered to us by Mr. J. W. Perit on his arrival, now daily expected in the Dorothea from Philadelphia, and by which we received your authority to purchase for shipment in that vessel, on her intended further voyage to Canton, quicksilver to the value of about £5,000, so that it can be had at about 1s. 10d., which, within a trifle, is its cost in our market, the price being from 1s. 10¼d. to 1s. 10½d., and we shall correct matters with Mr. Perrit for the execution of this order, which we consider it unnecessary to do, pending the arrival of the Dorothea, as there is a good supply of the article at present in our market; and we have no doubt of the quantity required being easily to be had without any increase of cost.

We shall, also, on an interview with Mr. Perit, endeavor to arrange the business of an open credit on Canton for £5,000 more, on the terms pointed out in your letter; and, generally, we hope to transact, to your entire satisfaction, all the matters you thus confide us. Referring to our future letters on this subject,

We remain, very truly, &c., &c., &c.,

BELL & GRANT.

The plaintiffs' counsel then read in evidence a certified copy of the record of a letter of attorney from the defendant to George W. Bruen, bearing date December 23, 1828.

Know all men by these presents, that I, Matthias Bruen, of Perth Amboy, New Jersey, have made, constituted, and appointed, and by these presents, do make, constitute, and appoint, George W. Bruen, of the city of New York, merchant, my true and lawful attorney for me, in my name, place, and stead, to manage, conduct, and carry on all

and singular my business and affairs of what nature or kind soever, to take and acquire for me, by purchasing, bargaining for, and merchandising all goods, wares, merchandise, goods, chattels, stocks, property, effects, lands, and tenements, all, and all manner of contracts, covenants, and dealings therewith, to make, execute, and carry on all sales, transfers, hypothecation pledges, mortgages, and dispositions thereof; to make and perfect all and all manner of contracts, covenants, promises, bills of exchange, promissory notes, acceptances, endorsements, bonds, deeds, conveyances, and assurances; to make, execute, and acknowledge, to receive, open, and answer letters, claims, demands, and disputes; to liquidate, adjust, compromise, submit to arbitration and release; to sign checks, endorse notes, and transact all business of whatever kind with the Manhattan Company; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I myself might or could do if personally present; with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness hereof, I have hereunto set my hand and seal, the twenty-third day of December, in the year of our Lord one thousand eight hundred and twenty-eight.

M. BRUEN. [L. S.]

Sealed and delivered in the presence of—
WILLIAM ROBERTS.

And the plaintiffs' counsel called and examined as a witness for the plaintiffs, George Frederick Darby, who testified, that he did business in the city of New York, in 1831; he knew the house of George W. & Herman Bruen, and that it stopped business, but had no recollection of the date of such failure.

Mr. Thorne succeeded to their business.

There was a business in 1831, conducted by George W. Bruen, in the name of the defendant, but the witness did not know the particulars. He thought there was an importation from Canton by the Dorothea, but did not remember whether the defendant had any thing to do with it.

And the plaintiffs' counsel produced and shewed to the witness a letter of the date of 14th June, 1831, addressed to him by the plaintiffs, and the witness testified that he received it at the time mentioned on the back thereof, being the 30th July, 1831; that a letter was enclosed in it, addressed by the plaintiffs to the defendant; he recollected the contents of such enclosed letter, it referred to a guaranty of the defendant; he has no recollection of the act of delivery of that letter; he was satisfied from the course of the business that the letter was delivered, but whether to the defendant or not, he could not say; witness stated that he invariably handed the letters to the parties, or their agents, or

sent them to them, a duty which he was not aware of ever having neglected. The letter enclosed, he did perfectly recollect; it referred to a credit granted to Thorne, it was an acknowledgment of the guaranty; he did not know who usually received the business letters in New York, addressed to the defendant.

And the plaintiffs' counsel produced and offered to read in evidence a letter of the plaintiffs to the witness George F. Darby, of the date of 14th June, 1831, proved to be in the handwriting of the plaintiffs; to which the counsel for the defendant objected as incompetent and inadmissible evidence; but the judge overruled the objection, and admitted the letter to be read, so far as related to the guaranty and credits to Thorne, for the purpose of shewing that the plaintiffs acted on the faith thereof; to which decision the counsel for the defendant excepted; and such part of the said letter accordingly was read, and is as follows.

And thereupon, the plaintiffs counsel read the extracts from the said letter, as follows:

Mr. GEORGE F. DARBY.

LONDON, 14*th June*, 1831.

We have perused with the attention it merits, all you have written about the Dorothea's Canton voyage, and the portion of it which is likely to come to our share; and as soon as we have had an interview with Mr. Perét, the supercargo, the result of our deliberations shall be communicated to you; meanwhile, we have received from Mr. Bruen the original of the letter he addressed to us on the 4th ultimo, and enclosed you will find our reply, which, after perusal, please close and deliver.

BELL & GRANT.

The witness further testified, that he was in that year, and the following years, until 1837, inclusive, the agent of the plaintiffs at New York.

And the plaintiffs' counsel produced and offered to read, for the purpose of shewing the acting by the plaintiffs on the guaranty certain other letters from the plaintiffs to the witness, Darby; and also certain letters from the witness, Darby, to the plaintiffs; to each of which letters, and to every part of the same, the defendant's counsel objected as inadmissible and incompetent evidence; but the court overruled the said objections, and allowed so much of said letters as related to the dealings with Thorne, and the reliance on the defendant's guaranty, for the sole purpose of shewing such dealings in reliance on the said guaranty; to which several decisions of the court the counsel for the defendants excepted. And the said letters were read, as follows:

[Private.]

LONDON, 14*th June*, 1831.

Mr. GEORGE F. DARBY.

DEAR SIR: Mr. W. H. Thorne (alias the Bruen's, for we can hardly separate the concerns, as not being all theirs, and have, indeed, now

Mr. Matthias Bruen's guarantee as to all credits) has had credits opened for him as wanted, and as he carries on already, and we hope successful business, he will find us ready to grant him, as we formerly did G. W. & H. Bruen, every reasonable facility; but we must still endeavor to keep insurance in our hands, unless in cases where manifest disadvantage would arise in not allowing them to be made in America. The guarantee of Mr. Matthias Bruen is no doubt acceptable, and we believe a good security, but ultimate security is not all that should be looked for in embarking on matters of this sort. Besides, were any questions to arise, we might meet with opposition to our recovery beyond, perhaps, our power to counteract; so that a guarantee, however good, is not of itself a sufficient reason for granting all that may be predicated upon it.

We always are, dear sir, yours, faithfully,

BELL & GRANT.

LONDON, 14*th June*, 1831.

G. FRED. DARBY, esq., *New York*.

DEAR SIR: We have perused, with the attention it merits, all you have written about the Dorothea's Canton voyage, and the portion of it which is likely to come to our share; and as soon as we have had an interview with Mr. Perit, the supercargo, the result of our deliberations shall be communicated to you; meanwhile, we have received from Mr. M. Bruen the original of the letter he addressed us on the 4th ult., and of which you send us a copy; and enclosed you will find our reply, which, after perusal, please close, and deliver.

What further we have at present to offer on this subject you will find touched upon in the enclosed private letter, to which we also refer you for a reply on the subject of the credit which Messrs. Heckschers have opened with Messrs. H. Black & Co., of Montevideo, on us, and which you will see we have confirmed on the conditions therein stipulated.

All that Mr. Bruen has yet said to us on the subject of the costs on the Canton bills is contained in the following paragraph of his letter to us of the 7th ulto., viz: "The writer hopes to have an opportunity of replying to Mr. Bell's letter in relation to the costs on the Canton bills in his next letter." When that, therefore, reaches us, you shall have what farther he may write on this subject; meanwhile we are glad to observe that you do not lose sight of this matter.

We remain, very sincerely, dear sir, your friends and h'ble serv'ts,

BELL & GRANT.

NEW YORK, 30*th July*, 1831.

Private.

Messrs. BELL & GRANT—

DEAR SIRS: Mr. W. H. Thorne, or, in fact, the Bruens, for although, in the still unsettled state of these friends' affairs with the Go-

vernment, they cannot do business in their own name, nor would it do that it should be known that they had any interest with Mr. Thorne, still there can be no doubt that Mr. Thorne's business is theirs, that is, for the benefit of Messrs. G. W. & H. Bruen; the father, not being on the bonds, can carry on business in his name, and he occasionally does so, no doubt, also for the benefit of his sons. Mr. M. Bruen is very rich, and entitled to all the confidence you place in him. Mr. Thorne is making money in his business, which he manages with judgment, intelligence, and great attention, and on this account alone he is deserving of the confidence you place in him; but the guarantee of M. Bruen places your liabilities, in this quarter, on the safest ground.

I remain, with constant regard, dear sir, your ob't h'ble serv't,

G. FREDERICK DARBY.

NEW YORK, 30*th June*, 1832.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: Enclosed I now send you a letter from Mr. M. Bruen, authorizing you to contract for or purchase for account from £8 to £10 per st'g worth of quicksilver, to be shipped at your port or Cadiz, either for Canton direct or for this port, as you will be more particularly advised later; in either case all the conditions to be similar to those of the purchase made by you for the same account in the case of the ship Dorothea, with this difference, that, instead of confiding the property to a supercargo, it is to go direct to Messrs. Blight & Co., of Canton, a house of undoubted means and integrity, that is, in the event of its being sent in the Peruvian, which is yet uncertain, and depends upon the conditions of freight and commissions being made satisfactory to Mr. Bruen. If it is shipped here from Cadiz it will go forward, either to the above house, or any other equally satisfactory, or under charge of a supercargo, as Mr. Bruen may decide, and I approve of, in your behalf. In case Mr. Bruen concludes upon sending it in the Peruvian, he must agree to give the vessel hence a certain tonnage, and to provide for the possibility of not getting the quicksilver; he will require a credit on you to be negotiated in Canton for about £8 to £10 per st'g, which I have promised him you would, in that event, furnish.

It is almost certain that Mr. Bruen will succeed in making a compromise with the Secretary of the Treasury of all the outstanding concerns of Messrs. Thos. H. Smith & Sons and G. W. & H. Bruen, on the most advantageous terms; but whether he does or not, the responsibility of Mr. M. Bruen is undoubted; and besides, you have had sufficient evidence of their honor to inspire you with the necessary confidence in granting them the facilities, in relation to their present order for quicksilver, on the same footing as that per Dorothea, and without requiring a payment on account, as suggested in your letter of the 5th of May, in reference to other parties, but which, in this instance, I could not well stipulate for, not having done so in the shipment for Dorothea.

P. S. Since writing the preceding I have had some further conversa-

tion with Mr. Bruen about insurance on the property, representing the £5,000 st'g credit opened by you per acc. to Mr. Perit, for purchase of goods to come home in the Dorothea, and he has requested me to say that, if insurance is not already made on receipt of the present sheet, you will immediately effect it, as it cannot well be made here, as in all probability the proceeds of quicksilver, and of the said credit of £5,000 st'g, will come home in one invoice; so that, in the event of average, if part of the same invoice is insured here and part with you, difficulties would arise in ascertaining what part the different underwriters should pay; for this reason it is also important that the £5,000 should be insured at the same office, as the returns per quicksilver, stipulating for a return of premium, if possible, in the event of the non-investment of said £5,000 st'g. Mr. Bruen leaves you to make the insurance in the best manner, but calculates on you to do it.

Yours, G. F. D.

NEW YORK, 15*th and* 16*th May*, 1833.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: I some time ago alluded to a credit I had opened, at the request of Mr. Parish, in favor of Mr. Charles Treadwell, then about proceeding to Rio Janeiro, for the payment of 1,000 bags of coffee, to be purchased by him, and shipped for account of Mr. M. Bruen, on board of the ship Sarazen, for the port of Hamburg—invoice and bill of lading to be filled up to your order, and insurance to be effected by your good selves in London. As the Sarazen was still in Europe, I thought it unnecessary to write to you on the subject of this credit before, but as she left Hamburg for Rio early in June, and may be now in Rio, I enclose you herewith a copy of my said letter of credit in favor of Mr. Treadwell, that you may honor his drafts, if drawn in accordance therewith. Mr. Treadwell is to give you timely advice for insurance, and for your government. I will mention that the vessel stands A 1 at our office. The consignment of the said 1,000 bags of coffee is to be made over to Messrs. Parish & Co., of Hamburg, on their providing for the reimbursement of Mr. Treadwell's drafts out of insurance, &c., &c. I send you also a copy of the letter Mr. Parish wrote to me in asking said credit. Mr. Bruen being out of town, I cannot send you his confirmation of the same, which, however, is not necessary, the business being in order.

You will have been advised by Mr. W. H. Thorne that he also gave a limited order to Messrs. Prinulx, Tappens & Co., of Rio Janeiro, for the purchase of 500 bags of coffee, to be shipped to his address in this port, and for the cost of which he ordered them to value on you, he effecting the necessary insurance. In writing to Mess. Prinulx, Tappen & Co., I alluded to this order, and assured them that their drafts on you in payment would be honored by you on presentation. Under date of the 11th inst. I sent them a further limited order for the purchase of a parcel of coffee for account of Mr. John G. Bailey, of this city, and for the cost of which, say from £3 to £4,000 st'g, I author.

ized them to value on you, on forwarding your timely orders for insurance, and accompanying their drafts with invoice and bills of lading, which documents are to be made out to order, and to be sent by them to me, to be handed over to Mr. Bailey, on his reimbursing me the amount of their drafts on you, with your commission, cost of insurance, &c.

I have only to add, that I remain, with constant regard, dear sirs, yours, faithfully,

G. FREDERICK DARBY.

NEW YORK, 16*th May*, 1833.

Mr. Thorne succeeded yesterday in meeting with bills for part of the amount he has to remit you, and by next packet he will send you further remittances. I am happy to say, that the cargo of the Manilla comes to a good market, and gives a very fair result, the whole being already sold. Indeed I may say, with truth, that all Mr. Thorne's return voyages from the Mediterranean do well. Mr. Bruen expressed to me yesterday his satisfaction at Mr. Thorne's good and judicious management.

Yours, G. F. D.

LONDON, 22*d, June*, 1833.

Mr. G. F. DARBY, *New York*.

DEAR SIR: Mr. Thorne's regularity is quite exemplary, and would encourage us to proceed with him, even in the absence of the good account we are happy to find you can still give us of him, and which it is satisfactory to receive; but we remark, that when speaking of him, you no longer advert to the guarantee we hold for his transactions from Mr. M. Bruen, which we do not lose sight of; at same time that we should be sorry it were our only dependance, or that we should ever have occasion to resort to a security so difficult to be made good, as guarantees of this kind frequently are.

We remain, dear sir, your friends and svts.,

BELL & GRANT.

NEW YORK, 31*st July*, 1833.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: Your remarks about my good friend Mr. Thorne are equally so. I can only repeat to you, that his business is prosperous, and that besides the guaranty you hold of Mr. Bruen, you have the greatest of all security, in your transactions with him, in his moral character, which, for strict integrity and honesty, stands as high as that of any merchant in this city.

The operation in sugars, of Mr. W. H. Thorne, per Agnes, from Mantanzes to Marseilles, having left a very handsome profit, Mr. Thorne has determined to give another similar limited order to Messrs. Picard & Albers, and, for their reimbursement for the cost of the same, he has requested me to open a credit for ac't on you, in their favor, for £4,000 stg., say four thousand pounds sterling, and I have accordingly done so,

and enclose you herewith a copy of my letter of credit, that you may shew due honor to the drafts of Messrs. Pickard and Albers, if drawn in virtue thereof. I could not prevail on Mr. Thorne to give you the order for insurance, the credit is opened for ac't, and not as in the case of the Agnes for account of Messrs. Archias & Co., but with the understanding that said house in Marseilles are to remit you the amount drawn by Messrs. Pickard & Albees, on the arrival of the sugar in Marseilles.

Yours, &c. G. F. D.

NEW YORK, 23*d January*, 1834.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: I take note of the credit you had opened for account of Mr. W. H. Thorne, in favor of Messrs. Robert Anderson & Co., say for £4,000 stg., to enable them to continue their advances on consignments to his address, which is well, particularly as business must some day revive; indeed, it is to be hoped, that a change for the better will soon take place, for otherwise consignments would not be desirable on any terms.

By this opportunity, you will receive from Messrs. Chas. A. & Ed. Heckscher, a letter from Messrs. Russell & Sturgess, of Manilla, mentioning that the Dorothea was loaded, and would sail about the 15th or 20th of August. The sugar by her cost $5 per picul; hemp $100; exchange 4 per ct. They had executed Mr. Bruen's order, and Capt. Conyngham valued on you for the cost of the same, £860; he had also drawn on you, in virtue of the other credits, £3,490; but, as yet, he had not availed himself of the remaining credit for £500. When this ship comes in, you may be sure that the needful will be done, in the way of remittances, to cover said valuations. Our friend Mr. Bruen feels disappointed and mortified that he cannot remit you, by this opportunity, in reimbursement of your advances for his account per shipment per Peruvian. The present state of things in this country makes it of the greatest importance to be extremely cautious in the purchase of bills, especially where the amount is so heavy, say £12,264 6 9, balance due you up to 30th June last; and being aware of this, and at the same time perfectly satisfied that the only inconvenience that could arise to you would be the delay of a packet or two, I did not like to urge him too much to remit, preferring to allow him ample time to make a satisfactory arrangement for bills, especially as I had diverted his attention from taking them from a certain quarter, which I thought it advisable to do. I am confident a remittance will go forward to you by next packet, and in such bills as will prove perfectly satisfactory and agreeable to you to receive. I may have been indirectly the cause of the delay, from the great caution I recommended in buying bills. On the score of security, you have, besides the goods, the responsibility of Mr. Bruen, which is unquestionable and satisfactory in all accounts. For your advances on freight, a remittance will, I hope, also go forward by next packet, which is, however, uncertain, as the freight is not

due but 60 days after the arrival of the vessel; but notes will probably be given, and with them, bills can be purchased.

Remain, dear sir, yours, truly,

G. FREDERICK DARBY.

NEW YORK, 15*th November*, 1834.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: It is true that the losses on Canton importations have in general proved most ruinous, that is, where persons were compelled to sell on arrival to pay for the advances they had taken. Mr. Bruen, however, I am happy to inform you, is not of that number; as his importations have arrived, he has only realized such parts as have little or no loss, some kind of teas having sold much better than others. His entire importation per Tunier, and half of that per Camalis, are yet unsold, and as prices for teas have risen considerably of late, by holding, his loss will be much diminished; and after all, he will get out of the scrape without that serious loss which, if he had sold on arrival, he would have had to submit to. After all he has managed better than others, and it may be not out of place here to remark, that the immense real estate of Mr. Bruen in this city has, by late improvements, become immensely valuable; and if he has lost on Canton business, it is a trifle compared with the increased value of his real estate. The improvements alluded to have not been less promoted from the fact of Mr. G. W. Bruen having been alderman in the ward where they have taken place.

Yours, respectfully,

G. FREDERICK DARBY.

NEW YORK, 7*th September*, 1835.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: All you write about purchases of British goods, for account of Mr. M. Bruen, are duly noted; and, at the same time that I regret you should decline such business, I will simply remark for your information, that Mr. M. Bruen's property is chiefly invested in real estate, which has so much increased in value in this country within a few years, that he must be now worth probably 3 millions of dollars. He finds it to be so much for his interest to invest in real estate, that he cannot afford to pay extra for what he may require for his commercial operations, and to apply, as in the case in question, for facilities from others. I may here mention, also, that a final settlement has been made between his sons and the United States Government, by which they have obtained their release in full of all demands, so that they can again transact business in their own name; and it is in contemplation that Mr. Herman Bruen, the second son, formerly of the firm of G. W. & H. Bruen, should join Mr. Thorn, the father making a further addition to the capital already in Mr. Thorne's business belonging to him. The additional capital talked of is from £15 to £20,000 stg. Mr. G. W. Bruen will, in the event of this arrangement being made,

withdraw entirely from business, for which he is in fact not so well calculated, nor can he give it the attention it requires, his other avocations taking up his time.

Mr. Thorne has just called to introduce Mr. Chamberlain, Phelps, and Co., of this city, who being very good, and requiring a credit for their account in favor of Messrs. J. L. Payson and Co., of Messina, I have opened the same as per copy of letter of credit enclosed.

I remain, with constant regard, dear sirs, yours, truly,

G. FREDERICK DARBY.

Duplicate, original, per Hibernia.

LONDON, $\frac{14}{22}$ *June*, 1833.

Mr. G. F. DARBY, *New York.*

DEAR SIR: Mr. Thorne's regularity is quite exemplary, and would encourage us to proceed with him even in the absence of the good account we are happy to find you can still give us of him, and which it is satisfactory to receive; but we remark, that when speaking of him you no longer advert to the guarantee we held for his transactions from Mr. M. Bruen, which we do not lose sight of; at same time that we should be sorry our only dependance, or that we should ever have occasion to resort to a security so difficult *to* be made good as guarantees of this kind frequently are.

We remain, dear sir, your friends and serv'ts,

BELL & GRANT.

The witness said, that he did not recollect which Mr. Bruen was alluded to in the letter of witness to the plaintiffs, dated the 16th of May, 1833, which had been read; the Canton business mentioned in his letter of 17th November, 1834, was the importation of goods from Canton conducted in the name of the defendant, which continued as long as the correspondence which had been read lasted.

And the plaintiffs' counsel produced and offered to read in evidence a letter from William H. Thorne to the plaintiffs, having proved that the same was in Thorn's handwriting; to which letter the defendant's counsel objected as inadmissible and incompetent evidence; but the court overruled the objection; to which decision the counsel for the defendants excepted, and the letter was thereupon read as follows:

New York, March 31st, 1836.

MESSRS. BELL & GRANT.

GENTLEMEN: Since my last of 24th inst., I have not received any letters from you; I am sorry to say that the attempt to sell your sherries by auction was not attended with any succeess; 1 hhd. marked (B. S.) brown sherry, was knocked down at $1 per gallon. There was so little disposition to purchase, that I found it impossible to proceed, and concluded to adjourn the sale until the country purchasers came in the market. The quality of the wine is good in its kind, but by no means suited to the present taste; nothing but very pale wine will now sell currently; brown is entirely out of fashion among the grocers; it should also be in qr. casks.

I have lately sold some pale wine in qr. casks, of ordinary quality, at $1 50 per gallon; whilst for brown, of far superior quality, I cannot get $1. I have sold a large parcel of San Lucas wine, consigned to me by Messrs. La Cave and Echicopa, per Lurin, which may lead to further shipments; and as they will require a credit opened to enable them to make advances, you will please authorize them to draw on you, on the usual conditions, to the extent of £2,500, say two thousand five hundred pounds. Business is very brisk, and goods generally are bringing high prices, but money is very scarce.

I remain, very respectfully, your most ob't serv't,

W. H. THORNE.

The plaintiffs' counsel also produced, and offered to read in evidence, the bills of exchange next hereinafter mentioned, and endorsements thereon, having proved the names of the drawers thereto and the endorsers thereon, to be in the handwriting of the respective persons thus named; the defendant's counsel objected, that they were not admissible and competent evidence against the defendant, and that the plaintiffs were bound to prove by the persons thus named, or other evidence than the bills themselves, that the bills were actually drawn, accepted, and paid; but the court overruled the objection, to which decision the defendant's counsel excepted, and the bills of exchange and endorsements thereon were read, as follows:

Exchange for £385 st'g.

CADIZ, 22*nd*, *November*, 1836.

At usance and a half pay this first of exchange (second and third unpaid,) to the order of ourselves, three hundred and eighty-five pounds sterling, value per Commissary, which place to account of W. H. T.

LA CAVE & ECHICOPAR.

TO MESSRS. BELL & GRANT, *London*.

Endorsed.

Pay to the order of Don Juan Jose Triathe, value received from the same.

CADIZ, *ut retro*. LA CAVE & ECHICOPAR.

Pay to the order of Messrs. Miguel Itozen, Bros., value in acct. with the same. JUAN JOSEPH TRIATHE.

CADIZ, 30*th Nov* , 1836.

Pay to the order of Messrs. De Santiago Goza, and company, value received. MEGUEL STOZENA, BROS.

MADRID, *Dec.* 7, 1836.

Pay to the order of Rodriquez Y. Saludo, value in acct.

SANTIAGO GOZA & Co.

MADRID, 8*th Dec.*, 1836.

Pay to the order of Messrs. Rothschild, Freres, value in acct.

RODRIQUEZ Y. SALVEDO.

BAYONNE, 15*th Dec.*, 1836.

Pay Messrs. N. M. Rothschild or order, value in account.
Pr. pro. of DE ROTHSCHILD, BRO'S,

Also bill of exchange of same parties of 17th October, for £250; also bill of exchange of same date and same parties, for £367 11 7; also bill of exchange of same parties, of 10th October 1836, for £369; which said bills were duly endorsed by the payees thereof. The plaintiffs' counsel also produced, and offered to read in evidence the following letter, having proved it in the handwriting of Mr. W. H. Thorne; to which the counsel of the defendant objected as inadmissible and incompetent; but the court overruled the objection, to which the counsel for the defendant excepted, and the letter was read as follows.

NEW YORK, *October* 31, 1834.

MESSRS. BELL & GRANT.

GENTLEMEN: Since I had this pleasure on the 23d inst., I have received your letter of the 18th September, by which I see with pleasure, and that you give up the point of insurances, because it does away with the necessity of my applying to other houses for credits, which I can assure you I *would* have done with reluctance; and now that we are perfectly understood as to this matter, I have to request that you will open the following credits for my account.

To Messrs. R. Anderson & Co., Gibraltar, for the purpose of making advances per my account £4,000. To Messrs. Archias & Co., for same purpose, £4,000. To Messrs. Francia & Co., Brothers & Co., of Gibraltar, £2,500. These gentlemen have their particular friends in Gibraltar and Malaga, and have signified to me that a credit lodged with them will enable them to be useful to me. The above credits to be received as fast as the amount drawn for shall be made good by me.

I have also to request that you will open a credit to Jn. L. Payson & Co., Messina, for the purpose of loading the Ship Herald, which I am now about dispatching for Marseilles, when she will proceed to Messina.

I note you have received a remittance from Major Moore in account of bills amounting to £1,449 2 11.

The Bevis will sail in the morning; nothing more has been shipped on first account. The rum amounts to more than I had expected; instead of $1,000 it should be $1,300.

I remain, your obt. servt.,
W. H. THORNE.

The plaintiffs' counsel also produced and offered to read in evidence the following letter, to which the counsel for the defendant objected, as inadmissible and incompetent evidence; but the court overruled the objection, to which the counsel for the defendant excepted, and the letter was read as follows.

NEW YORK, *9th July*, 1836.

MESSRS. FRANCIA, BROTHERS & Co., *Gibraltar*.

DEAR SIRS: I do hereby authorize you to draw on Messrs. Bell & Grant, of London, for account of W. H. Thorne, esq., of this city, to the extent of £3,000 pounds sterling, say three thousand pounds sterling, on account of shipments to be made by bills of lading, filled up to his address, as more particularly explained by him; insurance to be effected in this city; and I do hereby engage in behalf of Messrs. Bell & Grant, of London, conformably to the power by them vested in me, that your drafts on them, in virtue of this credit, and for the purposes above stated, shall be duly honored by them on presentation; this credit to remain in force twelve months from this date.

I am, with great regard, dear sirs, yours, truly,

(Signed,) G. FREDERICK DARBY,
Attorney of Messrs. Bell & Grant, London.

The plaintiffs' counsel also produced, and offered to read in evidence, the following bills of exchange and letters, having proved that the names of the drawers and endorsers of such bills, and of the writer of the letter, were in the handwriting of the persons therein named; to each of which the defendant's counsel objected *to*, on the same grounds they had objected to the admissibility of the bill of exchange of Le Cave & Echicopar; but the court overruled the said objections, and the bills of exchange and letter were read as follows:

A bill of Archias & Co., dated 25th October, 1836, for			£500
A bill of Francia, Brothers & Co., dated 11 Oct., 1836, for			700
Do.	do.	11 Nov., 1836,	128 15
Do.	do.	3 Oct., 1836,	400
Do.	do.	" 1836,	500
Do.	do.	" "	520
Do.	do.	" "	600
Do.	do.	" "	980

For £318 12 6. GIBRALTAR, *16th December*, 1836.

At ninety days after date pay this first of exchange, (second and third not paid,) to the order of ourselves, three hundred and eighteen pounds twelve shillings and six pence sterling, value in ourselves, which place to account of W. H. T., as advised.

ROB. ANDERSON & CO.

To MESSRS. BELL & GRANT, *London*.

(Endorsed:)

Pay to the order of Messrs. John Duffield & Co., value received.

ROB. ANDERSON & CO.

GIBRALTAR, *17th December*, 1831.

Pay Messrs. Duffield & Company, or order, value in account.

DUFFIELD & COMPANY.

GIBRALTAR, *December 17th*, 1836.

NEW YORK, *August 23d*, 1836.

JOHN DUFFIELD & CO.

GENTLEMEN: Above is a copy of what I wrote you on the 15th inst.; I have since received your much esteemed letter of the 14th ult., inclosing my account current, which shall be examined; I have chartered the brig Robert Adams, to proceed from Cadiz to Smyrna, to load a Cargo for this port; you will therefore oblige me by opening the credit for £3,500 in favor of Messrs. Amie, Zipcey & Co., of that place, wording it so that it may apply to any other vessel, in case of accident to the R. A. Very respectfully, your obt. servant,

W. H. THORNE.

For £1,590 sterling. SMYRNA, *the 7th January*, 1837.

At sixty-one days from sight pay, by this first of exchange, to the order of Messrs. Geo. Papasson, the sum of one thousand five hundred and ninety pounds sterling, value received in cash, of the same, which you will pass according to the advice of—

G. AMIE, ZIPCEY & CO.

TO MESSRS. BELL & GRANT, *London*. *In liquidation*.

(Endorsed:)

Pay to the order of Messrs J. Allien & Co., value on account. SMYRNA, ut retro.

GEO. PAPASON.

Pay to the order of Mr. S. G. Sina, V. in account.

Per pro. J. Q'UN ALLIEN & CO.,
JN. ALLIEN,
ANT. ALLIEN.

CONSTANTINOPLE, *January 11th*, 1837.

Pay to the order of Mr. J. Horstman, value in account.

SIMON G. SINA,
J. HORSTMANN.

VIENNA, *the 31st January*, 1837.

For £140 sterling. SMYRNA, *the 7th January*, 1837.

At sixty-one days from sight pay, by this first of exchange, to the order of Messrs. Jelli Guistimann, Sponti & Co., the sum of one hundred and forty pounds sterling, value received in cash of the same, which you will pass according to the advice of—

G. AMIE, ZIPCEY & CO.

TO MESSRS. BELL & GRANT, *London*. *In liquidation*.

(Endorsed:)

Pay to the order of Messrs. Castelli, Brothers; value in account.

ILLI GUISTIMANN, SPONTY.

CASTELLI, BROTHERS, *Smyrna, ut retro*. *In liquidation*.

NEW YORK, *8th March*, 1837.

GENTLEMEN: Above is a copy of my last, since when I have received your letter of the 19th January, by which I am happy to find that Messrs. Freeling, Goshen, had paid you the balance of the first bill, for £3,000.

By this packet I sent Messrs. Little, Dale & Co., for acceptance, Wright & Co's. bill, at 60 days, on Wm. Wright, - - £2,000
" " " - 1,500

In all, - - - - - - £3,500

Which you will place to my credit, together with the enclosed bill, drawn by Edward Peel on Wm. Bavais for £70; as this remittance will very nearly balance my old account, I have prevailed on Mr. Darby to open me a credit similar to the last, and on the same conditions, for £3,500, which shall be punctually provided for on the 8th May next, if not sooner.

Money continues as scarce as ever, and very little business doing.

I remain, &c.,

W. H. THORNE.

Exch'e £1000. No. 1129. NEW YORK, *March 8th*, 1837.

Sixty days after sight of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of William H. Thorn, esqr., one thousand pounds sterling, value received, and place the same to account, as advised by

G. FREDERICK DARBY.

To Messrs. Bell & Grant, London.

(Written on the face:)

15th April, 1837, at Messrs. Prescott & Co.

BELL & GRANT.

(Endorsed:)

Pay to the order of Messrs. Smith & Town.

W. H. THORN.

Pay to the order of Messrs. W. & J. Brown & Co.

SMITH & TOWN.
W. & J. BROWN & CO.

Received 21 Sept'r, 1839, the balance due on the within bill, with charges and int. to 16 Sept.

DENISON & CO.

Received 21 May, 1838, in part of the within amount, five hundred pounds.

M. MARSHALL.

Exch'e £1000. No. 1130.

NEW YORK, *March 8th*, 1837.

Sixty days after sight of this first of exchange, second and third of the same tenor and date unpaid, pay to the order of Wm. H. Thorn, esqr., one thousand pounds sterling, value received, and place the same to account, as advised by

G. FREDERICK DARBY.

To Messrs. Bell & Grant, London.

(Written on the face:)

15th April, 1837, at Mess. Prescott & Co.

BELL & GRANT.

(Endorsed:)

Pay to the order of Smith & Town.

W. H. THORN.

Pay Mess. To. Wilson & Co., or order.

SMITH & TOWN.
THO. WILSON & CO.

Exch'e £500. No. 1131.

NEW YORK, *March 8th*, 1837.

Sixty days after sight of this second of exchange, second and third of the same tenor and date unpaid, pay to the order of Wm. H. Thorn, esq., five hundred pounds sterling, value received, and place the same to account, as advised by

G. FREDERICK DARBY.

To Messrs. Bell & Grant, London.

(Written on the face:)

15th April, 1837, at Messrs. Prescott & Co.

BELL & GRANT.

(Endorsed:)

Pay to the order of Smith & Town.

W. H. THORN.

Pay Mess. W. & J. Brown & Co., or order.

SMITH & TOWN.
W. & J. BROWN & CO.

Rec'd 21 Sept'r, 1839, the balance due on this bill with charges and int. to 16th Sept., '38.

DENISON & CO.

Received 24th May, 1838, in part of the within amount, two hundred and fifty pounds.

M. MARSHALL.

The plaintiffs' counsel then produced and offered to read in evidence a letter from George F. Darby to the plaintiffs, which Darby testified was written at the time it bears date, and contained a true account of the transaction and matters therein stated. The defendant's counsel objected to the letter as not being admissible and competent evidence; but the court overruled the objection, to which the defendant's counsel excepted, and it was read as follows:

NEW YORK, 8 *March*, 1837.

Messrs. BELL & GRANT:

DEAR SIRS: Since closing my letter of yesterday with P. S. of this morning, by this packet, I have received the enclosed letter from Mr. Lampars, which I am happy to find contains a further remittance of £3500 st'g, on account of the cargo per Jorua. It appears that Messrs. Tupper & Co. have omitted advising Mr. Lamper of the amount of their drafts on you pr. N'a, nor have they acquainted me with the same; in this respect Mr. Robert Mead has been very remiss; and with regard to the coffee pr. Caroline, I am sorry to say that it does not seem prime green Coffee as was ordered, that is, as far as can be ascertained, a great part being badly damaged.

You have enclosed the dup. of a letter from Messrs. ———. Mr. W. H. Thorne remits you by this packet first rate bills on Liverpool to the amount of £3500 st'g, and in consequence I have granted him, as I promised I would do, a renewal for the same amount, under an engagement of Mr. Bruen, that a remittance should be made you for a like amount by the packets of the 1st and 8th of May, placing collateral security in my hands, as in the former case, as my next will more particularly explain to you; in the mean time I have to advise my following drafts on you for N'a under this arrangement, viz:

£1000	st'g,	No.	1128,	8th March, at 60 d's,	my order.
1000	"	"	1129		
1000	"	"	1130	do	order W. H. Thorn.
500	"	"	1131		
£3500	st'g.				

Which please honor on presentation, and pass to the debit of said friend, who feels very thankful to me for having granted him his service, of which, for the reasons before named, and the extraordinary pressure in the money market, he stood in great need. I have no doubt it will meet your entire approbation, which I shall be happy to have for my government hereafter on similar occasions.

Mr. Lohman's remittance must be deferred until next packet, when I expect to remit you also the balance from Mess. D. Buck, one of the firm having just called upon me; and besides £1000 st'g, for account of Mr. Deveraux, besides what further remittances I can scrape together.

The Caroline was loading at Buenos Ayres on the 2d Jan'y, which I mention for your government for insurance.

Mess. Zimmerman, Frazer & Co.['s] drafts on you, up to that time on account of this cargo, amounted to £2000 st'g.

They advise a further shipment of nutrias for account of Mess. Setons, as follows: "We ship in the Swedish bark Susan, Capt. Gull, for your port, another small parcel of nutrias, account of Mess. Setons, of which we shall send you the bill of lading by this vessel. Mess. Setons have not yet countermanded their order for nutrias; still we do not consider it likely that we shall be able to make further shipment to them."

All which let serve also for your government for insurance. Mess. Setons were much pleased with the sale you made of their beavers, but we have not yet gone into a calculation of the probable nett proceeds, for the purpose of ascertaining what they were to remit you, but it shall have my immediate attention.

Believe me, dear sirs, yours truly,

G. FREDERICK DARBY.

P. S. On account of the renewal to Smith & T., as explained in my letter of yesterday, I have further drawn on you a like bill of £250 st'g

No. 1132. At 60 ds. order, J. Pegg, which please honor on presentation, the same as the £3695 15 5, drawn on this same account, having yet to draw on about £550. G. F. D.

The witness Darby testified that at the time of the transaction mentioned in this letter, nothing was said either *was;* as to the same being under the guaranty of the defendant, it was not mentioned. He had no recollection of having received any collaterals; he thought a memorandum was handed to him mentioning some, but he had no recollection of having received any. He saw the defendant here in New York frequently from 1831 to 1837, except when he was in Europe; when that absence was he did not remember; the defendant was frequently at the store where the business was done in his name.

George W. Bruen kept the store in which business was done in defendant's name, in Thomas H. Smith's store in South street; he thought Thorne's store was in the same building for part of the time; has no distinct recollection of the exact period.

Being cross examined, he said that Mr. Bruen referred to in his letter to the plaintiffs, of 8th March, 1837, was G. W. Bruen.

He received from George W. Bruen a letter, which was read, and is as follows:

NEW YORK, 16*th February*, 1837.

MR. G. FREDEDRICK DARBY,
Attorney of Messrs. Bell & Grant.

DEAR SIR: In consideration of the following bills this day drawn by you, at the request and for account of Mr. W. H. Thorn, on Messrs. Bell & Grant of London, viz:

£2,000 sterling, No. 1117. } At 60 days, order W. H. Thorn.
2,000 " No. 1118. }

£4,000 sterling.

say in all four thousand pounds sterling, I hereby guarantee to you, and engage, that a remittance for a like amount and 1 per cent. banking commission, shall be made to Messrs. Bell & Grant of London, through you by Mr. Thorn, in first-rate bills, to be approved of by you, either by the packet of the 1st, or that of the 8th of April, or part by each; and understanding from you that this is an arrangement which at the present moment you do not feel yourself authorized to make, under your latest instructions from Messrs. Bell & Grant, Mr. Thorn will, for your justification in this deviation from instructions place in your hands collateral security, thereby making arrangement without doubt perfectly satisfactory to yourself and friends in London.

Believe, dear sir, yours, truly,
G. W. BRUEN.

He could not say who drew up the form, but very likely he, the witness, did.

Upon being shewn a paper in the same words, except the signature, as the last letter, he said it was in his handwriting, and was the original draft from which the letter of guaranty of George W. Bruen was drawn.

The witness also testified, that he probably sold the bills and gave Thorne the proceeds. The bills were sold by Gibson, a broker; whether he gave the money to Thorne or to witness he did not recollect.

The witness also proved that he wrote the following letters to Thorne, which were read as follows:

NEW YORK, 16*th February*, 1837.

MY DEAR THORN: Gibson has sold the bills; they were drawn to your order; I rely on your writing to Messrs. Bell & Grant, in explanation of the transaction, stating that you have given me Mr. Bruen's guarantee and engagement that a remittance shall be made to cover them by you from here in 45 or 50 days; and that you had lodged collateral security with me for more than the amount of these bills. I wish you to add, that in consequence of this accommodation from me, you were enabled to remit this packet, £ and that you would continue your remittances to them by every packet, until you settled up what still remained due them in old accounts, and also to B. D. &c.

Be sure to write in strict conformity to what I have related, that our communications may agree. Let me know by the bearer how much you remit them to-day.

Believe me your friend,
G. FREDERICK DARBY.

I will send you in the course of the morning the guarantee for Bruen to sign, and then please hand the bearer the note as collateral.

MY DEAR THORN: Please have the enclosed copied off in original and duplicate, and have both signed by G. W. Bruen, esq., and sent to me in the course of the morning. The packet is detained, and I should like much to send one of the above by her, also a list of the notes you deposit with me as collateral; as it is a downright deviation from instructions, you must help me in making out a strong case of justification by attending to this note without fail this morning.

Yours, truly,

16*th February*, 1837. G. FREDERICK DARBY.

I want my $1500 to day; send a check per bearer.

The witnesses could not say whether the plaintiffs stopped the credits of W. H. Thorn in 1834; probably the credits to the Mediterranean were withdrawn.

The dealing of W. H. Thorne with the plaintiffs, between 1831 and 1837, were extensive, but varied in different years, being sometimes as much as £20,000 a year or more, and amounting altogether during those years to a very large sum.

The witness thought the defendant never attended personally to the business done in his name; he was absent some months in Europe; he resided at Perth Amboy, in New Jersey. The witness's place of business was at one time in Wall street, at another in William street.

He had no recollection of ever having seen the defendant at any time in his office. The defendant was frequently in Washington during the years before mentioned. He had no other occupation, so far as the witness knew, but attending to the case of his estate.

The witness knew of no communication between the plaintiffs and defendant, between the years 1831 and 1837, unless it might be in relation to the China business, and recollected no personal communication on business between himself and the defendant.

Mr. Grant, one of the plaintiffs, came to this country in June, 1837, for he was here on the fourth of July, which was a few days after his arrival.

The plaintiff stopped payment within two or three months, or less, afterwards.

Thorne stopped payment that year, but at what date the witness could not say.

The letter of the plaintiffs to the defendant of 14th June, 1831, which was inclosed in the letter to the witness, was probably delivered to G. W. Bruen, or to Thorne. The witness had no recollection of its delivery to the defendant personally.

At the time of negotiating the bills of £4,000 and £3,500, it was understood between Thorne and the witness, that they were acting in reference to the guarantee of G. W. Bruen and his promised remittance, and the witness would not without them have granted the credit.

The plaintiffs' counsel also produced and offered to read in evidence the following letter, proved to be in the handwriting of W. H. Thorne, to which the counsel of the defendant objected as not admissible or com-

petent evidence; but the court overruled the objection, to which the defendant's counsel excepted, and the letter was read as follows:

Messrs. BELL & GRANT, London,
"Napoleon."

Messrs. BELL & GRANT. NEW YORK, *July* 7, 1835.

GENTLEMEN: Since I wrote to you on the 30th June, I have received your esteemed letters of 29th (duplicate,) and 30th May, the former advising that you had advanced Mr. Thomas Ashman, on a quantity of drugs shipped to my consignment per Granges £217 17; also on a shipment of tartaric acid per Prince Oscar, from Marseilles, £91 3 6, neither of which vessels have arrived. I also note that you had accepted Messrs. Francia, Brothers & Co., draft, for advances made to Jno. Giero on shipment of wine per brig Fortune, amounting with insurance to £336 44; also per schooner Venesia, 364 8.

The former has arrived. I have also to advise the arrival of the Trubo this morning; the figs, altho' they have arrived rather late, will still do well, provided they be in good condition.

I have taken from Mr. Darby a special credit in favor of Messrs. Francia, Brothers & Co., for the purpose of landing the express, for £3,000, say three thousand pounds, which please note.

In looking into the state of my account with you, I find there still remains due you about £600, which is about equal to the advances on shipments made by Ashmon and Jno. Giero, not yet arrived, and on which you have made insurance.

Yours, respectfully, W. H. THORN.

The plaintiffs' counsel also produced and offered to read in evidence the following letters, having proved that the signatures to the same, severally, were in the handwriting of the persons named in such signatures; the defendant's counsel objected to each of them, that it was not admissible or competent evidence; but the court overruled the several objections, to which several decisions the defendant's counsel excepted; the letters were read as follows:

LONDON, 3*d December*, 1845.

SIR: We beg leave to confirm the foregoing copy of the few lines we wrote to you on the 29th ult., respecting the shipment of drugs made to you by our friends, Messrs. Thomas Ashmore & Co., from whom we enclose a letter. We have now the pleasure of acknowledging the receipt of your much esteemed favor of the 31st October, in compliance with which we have immediately increased the credits already opened for your account with Messrs. Robt. Anderson & Co., of Gibraltar, and Messrs. Archias & Co., of Marseilles, to the sum of four thousand pounds each, and opened fresh ones of £2,500, say two thousand five hundred pounds, in favor of Messrs. Francia, Brothers & Co., of Gibraltar, to enable them to grant advances on consignments to you from thence, and from Malaga; and authorize Messrs. J. L. Payson & Co., of Messina, to draw upon us for your account for such sum as may be requisite, in order to load and despatch the ship Herald, with the cargo you

have ordered, on her arrival there from Marseilles, whither she is to proceed as soon as she has discharged her present outward cargo. And it is moreover understood, that so soon as the credits in favor of the three first named houses have been used and remitted for by you, we are to re-open the same accordingly, which shall be attended to.

We take note that the rum shipped per Bevis, on joint account with Messrs. Bell, DeTough & Co., amounts to $1,300, instead of $1,000; and we have provided for such increased cost in the insurance, being all that offers at present.

We remain, very respectfully and truly, your obedient and humble servants, BELL & GRANT.

P. S. Messrs. Ashmore having sent the invoice and bill of lading of their shipment per Montreal to us, you will find them enclosed.

LONDON, *9th September*, 1836.

SIR: Your favor of the 15th ult. has reached us to day, and remits further £2000, DeRham & Moores, on T. W. Smith & Co., at 60 ds. st., which is now out for acceptance, and shall duly appear to your credit. We have, agreeably to your request, opened a credit to Messrs. G. Amie, Zipcey & Co., of Smyrna, for the loading of the vessel you intended sending there for a cargo, the credit to the extent of £3,500. Messrs. Francia, Brothers & Co., of Gibraltar, have drawn upon us on your account, in virtue of a credit lodged with them by Mr. G. F. Darby, under date of the 9th July, for £3000 at 90 days, from the 30th ult., which, with our commission, £30, and 15 8, postages, together £3030 15 8, we place to your debit from the 1st December next. These gentlemen have also a credit of £3000 for the loading of the Empress; and they intimate their intention, moreover, of drawing some time hereafter, on consignment, under the general credit of £4,500, upon for that purpose.

We remain, sir, your obedient servants,
BELL & GRANT.

Messrs. Bell, DeTough & Co. have also drawn upon us, for your account, £1844 19 5, for rags they were shipping to you, of which you shall have the precise note later. B. & G.

LONDON, *29th April*, 1836.

W. H. THORNE, esq., *New York*.

SIR: We beg leave to confirm our last respects, under date the 19th inst., and have now to acknowledge your much esteemed favors of the 31st ult. and 7th inst. This last covering a further remittance on account of Messrs. Bell, DeTough & Co., of Leghorn, £1,000 in J. N. Gosler's draft, at 60 ds. st., on Thos. Wilson & Co., which is in order, and shall be passed accordingly. These friends having lately drawn upon us for the cost of sundry goods they have shipped by your order, and per your account, by the Caroline, Balcher, master. We annex a memorandum of the same, amounting to £795 4 4, which we take the liberty of passing to your debit, as cash from the 14th July next.

We have opened a credit of £2,500, agreeably to your desire, in favor of Messrs. LaCane & Echicopar, of Cadiz, to be used by them against shipments of San Lucas wines to your address, and on transmission to us of a copy of the shipping documents as customary.

We are sorry to find that you did not succeed in your attempted public sale of our sherries, of which only one hh'd of brown was knocked down at $1 per gallon; and that you have, therefore, determined not to offer them again until your country purchasers come into the market; meanwhile, we notice that the only quality in demand is the pale sherry, in quarter casks. We remain, always, very truly, yours,

BELL & GRANT.

CADIZ, 12*th October*, 1836.

Messrs. BELL & GRANT, *London*. "Firefly."

GENTLEMEN: Since our last respects to you of the 13th August, which we confirm, we are deprived of your favors. We beg now to send you herewith bill of lading and invoice, of [mark] 21 hhd's and 204 qr. casks of San [mark] Lucas wine, shipped per American ship, Henry, Capt. H. Hurry, bound for New York, and consigned to W. H. Thorne, esq.; its amount, $3,997 50, you will please insure, and for the usual advances thereon we have drawn upon you, under date of the 10th, to our order, and 1½ usance, £369, at the rate of £6 per butt, which we recommend to your accustomed good protection.

We remain, gentlemen, your most ob't serv't.

CADIZ, 18*th October*, 1836.

GENTLEMEN: We had this pleasure on the 13th inst., as per copy above, which we confirm. Having since shipped more wine on board the American ship Henry, Capt. Samuel Hurry, we now wait upon you with the bill of lading of the same, viz., 210 qr. casks, 261 Indian barrels of white wine, consigned to Mr. W. H. Thorne, of New York, the invoice amount of which is $6720. But the owner wishes to insure only the amount of advances, $30 per pipe, and $5 per pipe more to cover premium of insurance and charges; therefore you will please to effect insurance upon $3,360 as value of the same.

To make the above named advances, we have drawn upon you for account of Mr. W. H. Thorne £250, 367 11 7 in our drafts of yesterday at usance and a half to our own order, and which we recommend to your protection.

We remain, dear sirs, yours, very truly,

LA CANE & ECHICOPAR.

CADIZ, 18*th November*, 1836.

Messsrs. BELL & GRANT, *London*.

GENTLEMEN: We are in receipt of your valued favor of the 1st instant, and thank you for the honor shown to our d'fts upon you as therein mentioned to the debit of Mr. Thorne. The enclosure for Malaga was duly forwarded. Our friend, Mr. Garriga, having applied to us for a further shipment of wine, equal to 60 butts, for New York, and finding that we have still to dispose of about £470 of the credit of

£3,500 lodged with you in our favor by Mr. Thorne, we have engaged said wines to the consignment of said gentlemen, and they are now shipped on board the Commissary, Capt. C. Ellis, to sail in a day or two. If we can get the bill of lading signed in time, we shall send you one enclosed; and as Mr. Garriga wishes to have these wines insured in the same manner as the parcel per "Henry," viz., to cover only the advance charges, you will please effect the insurance, valuing them $2,100, and take note that we shall draw upon you, for the purpose of making the advances on these wines, £385, at usance (and) a half, and to our order. We remain, etc.,

CADIZ, 26*th November*, 1836.

GENTLEMEN: We confirm our last respects to you of the 18th inst., as per copy above, and the object of the present is to accompany B. of L. and invoice of the wines, shipped per "Commissary" to the consignment of Mr. Thorn, of New York, and without further to communicate,

We remain, gentlemen, your most ob't serv'ts,

LA CAVE & ECHICOPAR.

MARSEILLES, *Oct'r 25th*, 1836.

Messrs. BELL & GRANT, *London*.

GENT'N: We confirm our respects of the 13th inst., enclosing our firsts of exchange on Messrs. Melhuish, Gray & Co., for £500 and £700, and requesting you to hold the same, after acceptance, at the disposition of the holders of the seconds, and advising you that we should probably soon draw on you on acc't of merchandise shipped to Mr. Wm. H. Thorn, of N. York. We have now to advise you that we have this day valued on you for acc't of this friend for £500 0 0, payable to own order, at 90 days date, and enclose you bill lading of 100 bales almonds, shipped him per the French brig "Bon Pier," Capt. Cappe, on acc't of which we have drawn; and we recommend our bill to your good acceptance to the debit of our mutual friends.

We remain, gent'n, your very ob't serv't,

ARCHIAS & CO.

GIBRALTAR, 11*th October*, 1836.

Messrs. BELL & GRANT, *London*.

GENTLEMEN: Your letter of the 10th ultimo has duly reached us, and we thank you for the ready honor shown to our valuations of the 30 August. We have now to advise our drafts on you, under date 3rd instant, for the following sums, viz :

£980, say nine hundred and eighty pounds.
£600, say six hundred pounds.
£520, say five hundred and twenty pounds.
£500, say five hundred pounds.
£400, say four hundred pounds.

Making together £3,000, say three thousand pounds st'g, the whole to the order of ourselves, at 90 days date. These drafts are against the

credit opened in our favor by Mr. G. Frederick Darby for account of Mr. W. H. Thorn, under date 9th of July last, for the loading of the ship Empress, and we transmit enclosed a bill of lading of her cargo. The cost of the said cargo amounts, as you will perceive by enclosed invoice, to $24,704 24; and as the shipper, Mr. John Giro, of Malaga, has an interest therein of one-third, we have made him a small advance of £700 st'g, for which sum, say seven hundred pounds, we have to-day valued on you, to our own order, at 90 days date, against the credit which you have lodged with us, for the purpose of advancing on consignments to Mr. Thorn. Your observations (in your letter of 10 ult., in regard to the last mentioned credit,) have our attention; and you may readily believe that it would be no less satisfactory to us than to yourselves if our aforesaid New York friend were more communicative and precise with you in these matters; but to us his communications on the subject are so distinct as to leave no doubt whatever of its being his intention that the credit should continue in force; and you may rest fully assured that we shall, in no instance, make use of the same without being duly instructed by him to do so.

We are, very truly, gentlemen, your ob't serv'ts,

FRANCIA, BROTHERS & CO.

GIBRALTAR, 14 *November*, 1836.

Messrs. BELL & GRANT, *London*.

GENTLEMEN: Your esteemed favor of the 1st inst. has come to hand, and we pay due attention to its contents. The premium at which you have done the insurance on the wool from Casablanca and Saffe cannot be considered unreasonable under the circumstances; and the party interested will, we doubt not, be quite satisfied.

Enclosed you will find bill of lading for a parcel of almonds, shipped per American brig Massachusetts, J. McKenzie, master, for New York, to the consignment of Mr. W. H. Thorn, for whose account we have this day valued on you, to our own order, at 90 days' date, for £128 15 st'g, say one hundred and twenty-eight pounds fifteen shillings st'g, being the amount we have advanced on the said shipment.

We have not had any tidings of the Vincitori since she left this , but should think that she must, by this time, be on her way to N. York.

We remain, very truly, gentlemen, your obedient serv'ts,

FRANCIA, BROTHERS & CO.

GIBRALTAR, 16*th December*, 1836.

Messrs. BELL & GRANT, *London*.

DEAR SIRS: We have to own receipt of your favor of the 7th October, which, as to the month, we take to be an "erreur de plume," concluding that it ought to have been November.

The Ocidentens concern, we have now the satisfaction of announcing to you, has been brought to a determination, as you will observe by our enclosed letter to Mr. Darby, which is left open; and, after perusal, we beg you will have the goodness to forward it. In accordance with the contents thereof, we remit you herewith £470 1 10, in our own draft of

the 5th inst., at 90 days, on Messrs. Elmslie & Stooks, for which please do the needful, and pass the am't to the credit of Mr. Darby's account.

Your directions for considering as cancelled your credit in favor of Mr. Lewis Agassis we have duly noted. These directions we have communicated to him, even by disposing for our letter being sent from Malaga to Adea by express, to which we were induced, by the tenor of a paragraph in a letter from Mr. Aqussies of the 3d inst., received subsequently to yours, and which paragraph you will find transcribed in continuation hereof.

By the "Eunomus," which arrived here on the 1st inst. from New York, we have received a consignment of 100 hhds. tobacco from Messrs. Oakley & Roome, of that city. For the advance our mutual friend, Mr. Darby, has made on this shipment, he has, as you will of course have been advised, drawn on you for our account, £1,105 18 10, which, with your charges, we have already requested Messrs. Elmslie & Stooks to pay to you at maturity.

We remain, very truly, dear sirs, your most ob't serv'ts,

ROBERT ANDERSON & CO.

London, 50, $\frac{5}{8}$ d.
Pill'd dolls., $\frac{3}{4}$ $\frac{0}{0}$

P. S. Since writing what precedes, we have received from Malaga the enclosed B. of L. for a quantity of fruit shipped there by Messrs. Delieus, Bro's, per the Isaac Classon, Comwell, Mr., to the consignment of Mr. W. H. Thorn, of New York, and on which, as previously agreed, we have made an advance of $4,500. In reimbursement for that amount and charges, as per note hereunder, we have drawn on you this day £318 12 6, at 90 days, to the order of ourselves, which valuation we beg, therefore, you will please to honor for account of Mr. Thorn, under his credit with you in our favor.

Note referred to.

Advance to Messrs. Delius, Brothers, Malaga, on fruit shipped from thence per Isaac Classen, to the consignment of W. H. Thorn, esq., New York - - - - - -	$1,510 0 0
Our commission, $\frac{1}{2}$ per cent. - - - -	7 6
Brokerage on our draft in reimbursement, 3 per mil. -	3 0 4
	$1,510 6 4
At 50 d. $\frac{5}{8}$ - - - - -	£318 12 6

SMIRNIE, 7 *Janvier*, 1837.

Messrs. BELL & GRANT, *Londres*.

MESSIEURS: En consequence à ceque nous êumes l'avantage de vous écrire par ut derniere du 26 Nov'r derniere, a sujet du brick Americain, Robt. Adams, nous avons l'honneur de vous annoncer que se navire a bien fini son affaire à Samos, et est parti le 2 de ce mois p. New York, avec 1,250 bls. vin, 145 couffes, noix et 1 tapis; nous sommes fachès, cependant qu'il n'a pas prendre tante la partie du vin que nous fimes appreter à Samos conformement aux instructions de Mon. W. H. Thorn,

et maintenant pour 350 lighths casks qui resterent à terre; nous aurons à nous entendre nous-mêmes directement avec le dit ami auquel nous ne manquerons pas d'en rendre compte. Nous vous remettons ci-inclus les connais sementes, et les comptes d'achâts et un extrait de n ete et avec Mr. Thorn's vous y verrez que cet ami nous reste encore debiteur d'un solde de P. 19,340 14. que nous compenserons par la suite avec le mt. des 350 ⅓ de vin restés à Samos. Conformement à la faculté que vous nous avez donné de famnié sur vous, Messieurs le Montaret de nos de bours et pour compte de Mr. W. H. Thorn, de New York, nous venons de nous prévalier aujour d'hui à 61 jours de vue en £1,590, a l'ordre de Géo. Papasan.

140, " Fillé, Geustemann, Sponty & Co.

£1,730

Avons vous perons de faire honneur à nous traites et vous entendre pelles avec Mr. W. H. Thorn, de New York, auquel vous aurez-la voute de faire pon venir l'incluse ainsi que celle pour Messrs. Jasigé, 1 Goddard, de Boston.

Nous vous saluons Messieurs bien distinctement, Londres 102 à 102¼ 102½ $21¾.

G. AMIE, ZIPC,EY & CO.,
En liquidation.

And the plaintiffs' counsel also called and examined, as a witness for the plaintiffs, William H. Thorne, who testified, that the writer of the above letters to the plaintiffs were his correspondents in the various places at which their respective letters bore date, and that the shipments mentioned in those letters were shipments to him in the usual course of business. The bills read in evidence were advances on these consignments.

He commenced business on his own account in New York in the latter part of 1829, or beginning of 1830.

G. W. & H. Bruen stopped payment in business in 1828; he had been with them a long time as clerk. He took up their business.

To the enquiry whether either of the Messrs. Bruens was connected with him in business, the witness answered that he considered George W. Bruen as connected with him; there was no positive agreement; George W. Bruen furnished him with funds, averaging yearly probably $30,000, and the witness had the defendant's endorsements when he wanted them.

Witness' place of business was in 1831, 1832, and a part of 1833, in the store of Thomas H. Smith, No. 166, South street; afterwards, he did business in Wall street, and afterwards in Pine street.

Business was conducted by George W. Bruen in the name of the defendant, during a part of the period, in the store of Thomas H. Smith.

It was not very extensive, perhaps, one ship a year; he thought that the ship Dorothea was one concerned in that business for them. It was

business with China; whether letters for the defendant were received there, witness did not know; he was in a different office.

Defendant often came to the store, I think as often as he came to town.

That concern never received notes or assets from the witness.

The defendant's endorsements for witness were at first, and chiefly, in the handwriting of George W. Bruen, during the latter part of the time, viz: 1835, 1836. Witness had the endorsement of the defendant himself; he had no conversation with the defendant about the endorsements made by G. W. Bruen.

The defendant was on the witness paper to a small amount during the last year of his business; at the time of his failure, about $7,000, on business notes given for merchandise bought by the witness, which were paid by the witness after his failure out of his own assets. In April, 1836, witness had probably thirty thousand dollars endorsed by defendant; this was reduced to about seven thousand dollars at my failure. The thirty thousand dollars was the amount of notes for my accommodation to raise money.

The amount in that year was less than in the previous years.

Witness failed about 7th April, 1837; the defendant was then in Europe, or on his way to this country, and arrived in April or May, and probably heard soon afterwards of the failure of the witness; the defendant's endorsements had not then been paid.

The witness could not tell how much of the defendant's endorsements were paid by him during the last six months of his business.

The defendant's endorsements for witness, in April, 1836, were probably about $30,000, which was all paid off, and the $7,000 was for another purpose.

At the time of his failure, the witness had good assets to the amount of about $180,000, which he realized and paid out, from time to time, within three or four months probably after his failure. He had no other confidential debts than the defendant's.

He could not tell how much was paid out of goods consigned to him, but it was not as much as had been advanced on them.

He thought that the plaintiff Grant came in May or June, 1837; he pressed witness on the subject of his debt, and witness gave him all witness could give him. He had other assets remaining which he paid out to various people.

The amount of his debt to the plaintiffs was then known.

G. W. Bruen might have known about the debt of the witness to the plaintiffs, but he did not know whether the defendant, or Herman Bruen, was aware of it.

The defendant did not call upon him about it.

In 1837, H. Bruen attended to the defendant's business. Upon being shown an account, the witness said that he examined and signed it in 1839.

The credits were due at the dates therein expressed. The account is as follows:

DR. *William H. Thorn, esq., of New York, in account current with Bell & Grant, London.* CR.

1837.			1837.		1837.			1837.		
June 2	To balance due this day, as per account rendered	£11,392 3 4	June 2		June 15	By remittance on Wright & Co., of Liverpool	£3,500 0 0	June 15		
	To G. F. Darby's draft on 8th March, on Mr. Thorn's account	3,500 0 0	17			Amount drawn on Crooke, Brothers & Co., Malaga	1,383 11 3	July 25		
Dec. 31	Amount due on a shipment of cotton from Pernambuco, as per account rendered	132 13 8	19			(N. B.—Crooke, Brothers, & Co. contest this item, and are now suing Bell & Grant, in England, for its return, and should they succeed in this action, the amount will have to come again to the debit of Mr. Thorn.)				
	Interest arising on this account to this time, as per note at foot	697 3 10	19							
		15,722 10 0								
	To balance brought down due from 31st December, 1838, (subject to the augmentation of £1,383 11 3, should Crooke, Brothers & Co. succeed in recovering that amount as above stated)	6,354 3 9			1838. Jan. 15	Remittance of Wilson & Brown, on account of goods made over as security	2,500 0 0	1838. April 15		
					April 6	Note on Randall & Green, handed to R. Grant by Mr. Thorn, $1,523 47-100, remitted to London at exchange, 105	326 9 2	July 6		
					Aug. 15	Amount of advance and charges on Sherry wine, consigned to Mr. Thorn, as per account, $5,380 4 0, at exchange 108 0	1,120 16 10	Aug. 31		
					23	Balance of sales of wool, as per account rendered	23 3 10	Nov. 14		
					Nov. 3	A further remittance of Wilson & Brown in full of proceeds of goods sold, $2,500 51-100, at exchange 109 1-2	513 16 0	1837. Feb. 7		
								1838.		
					3	Balance due Bell & Grant from..	6,354 3 9	Dec. 31		
							15,722 10 0			

Interest account.

1837.						1837.					
June 2	£11,392	3 4	577 *a*	£900	8 9	June 15	£3,500	0 0	562 *a*	270	8 2
17	3,500	0 0	562 *a*	269	9 0	July 25	1,383	11 3	524 *a*	99	6 10
						1838.					
19	132	13 8	560 *a*	10	4 1	April 15	2,500	0 0	260 *a*	89	0 0
				2	13 6	July 6	326	9 2	178 *a*	7	18 11
						Aug. 31	1,120	16 10	122 *a*	18	14 8
	Discount per contras					Nov. 14	23	3 10	47 *a*		2 11
						1838.					
						Feb. 7	513	16 0	38 *a* p	2	13 6
										485	11 6
									Balance	697	13 0
				£1,182	15 4					1,182	15 4

LONDON, 31*st December*, 1838.

(Signed) BELL & GRANT.

Examined and found correct.

(Signed) W. H. T.

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	To G. F. Darby's draft on 8th March, on Mr. Thorn's account		17	3,500 0 0		Amount drawn on Crooke, Brothers & Co., Malaga		July 25	1,383 11 3	
Dec. 31	Amount due on a shipment of cotton from Pernambuco, as per account rendered		19	132 13 8		(N. B.—Crooke, Brothers, & Co. contest this item, and are now suing Bell & Grant, in England, for its return, and should they succeed in this action, the amount will have to come again to the debit of Mr. Thorn.)				
	Interest arising on this account to this time, as per note at foot		19	697 3 10						
				15,722 10 0						
	To balance brought down due from 31st December, 1838, (subject to the augmentation of £1,383 11 3, should Crooke, Brothers & Co. succeed in recovering that amount as above stated)			6,354 3 9	1838.			1838.		
					Jan. 15	Remittance of Wilson & Brown, on account of goods made over as security		April 15	2,500 0 0	
	Interest account.				April 6	Note on Randall & Green, handed to R. Grant by Mr. Thorn, $1,523 47-100, remitted to London at exchange, 105		July 6	326 9 2	
1837.			1837.							
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			1838.							
19	132 13 8 560 *a*	10 4 1	April 15	2,500 0 0 260 *a*	89 0 0					
		2 13 6	July 6	326 9 2 178 *a*	7 18 11					
			Aug. 31	1,120 16 10 122 *a*	18 14 8	23	Balance of sales of wool, as per account rendered		Nov. 14	23 3 10
	Discount per contras		Nov. 14	23 3 10 47 *a*	2 11				1837.	
			1838.			Nov. 3	A further remittance of Wilson & Brown in full of proceeds of goods sold, $2,500 51-100, at exchange 109 1-2		Feb. 7	513 16 0
			Feb. 7	513 16 0 38 *a* p	2 13 6				1838.	
					485 11 6				Dec. 31	6,354 3 9
				Balance	697 13 0	3	Balance due Bell & Grant from			
		£1,182 15 4			1,182 15 4					15,722 10 0

LONDON, 31st *December*, 1838.

(Signed) BELL & GRANT.

Examined and found correct.

(Signed) W. H. T.

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The plaintiffs rendered accounts dated 31st December, 1836, and 2d

DR. *Wm. H. Thorn, esq., of New York,*

1836.	Interest to 31st December, 1836.									
June 30	To balance of ac. furnished him -	-	184	£256	10	4	£10,177	5	8
July 28	" La Cave & Echicopar's dft., and our charges on ac. of shipt., pr. Venus - - - -	Sept. 13	109	12	2	5	811	12	10
28	Do do pr. Mary	Oct. 10	82	13	4	2	1,175	16	11
Aug. 13	" Archias & Co., do Perseverance	Nov. 4	57	10	5	2	1,313	10	
27	" La Cave & Echicopars, wines, Montevideo - - -	15	46	0	18	11	149	19	10
Sept. 7	" Archias & Co., df. and chr., do Antoine - - - -	Dec. 1	30	8	14	5	2,121	13	4
9	" Francia, Bros. & Co., do, under credit from G. F. Darby -	1	30	12	9	2	3,030	15	8
28	" Bell, De Tough & Co., in ac. of rags, per Aurora - -	4	27	11	7	10	3,079	11	10
28	" Archias & Co., do almonds, pr. Superior - - -	23	08	0	11	1	505	7	9
Oct. 14	" Crooke, Bros. & Co., do fruit, G. Warren - - -	27	04	1	6	2	2,386	3	10
22	" Zimmerman & Co., do hides, Gambria - - -	7	24	22	9	3	6,833	8	7
	" Crooke, Bros. & Co., do fruit, pr. Harriet - - -	Jan. 13	-		-		432	13	9
	" Francia, Bros. & Co., do do Empress - - -	4	-		-		3,738		
	" La Cave & Echicopar do wine ex Henry - - -	12	-		-		390	2	8
27	Do do do ex Henry	14	-		-		638	14	7
Nov. 4	" Archias & Co., do almonds, pr. Bonpere - - -	26	-		-		505	9	6
4	" Crooke, Bros. & Co., do raisins, pr. Harriet - - -	21	-		-		966	0	8
26	" Francia, Bros. Co., do almonds, ex Massachusetts - -	Feb. 15	-		-		130	10	5
Dec. 10	" La Cave & Echicopar, do wine, ex Commissary - -	25	-		-		398	9	1
21	" R. Anderson & Co., do fruit, ex Isaac Clason - - -	Mar. 19	-		-		322	9	9
	Discount, per contra - -	-	-	2	4	5			
				£352	3	4			
	" Balance of interest to ch. a. 500 pr. annum - - -	-	-		-		237	5	10
	" Our commission on £2,800 insurance, effected 26th Oct. last, by order of Francia, Bros. & Co., on wool, pr. from coast Barbary to New York, and now cancelled by their desire, frgt. ½ p.c.	-	-		-		14	0	0
	Postage and franking of letters beyond those charged in ac., sent as above - - -	-	-		-		2	12	0
							39,361	14	6
	To balance brought down -	-	-		-		27,861	2	5

LONDON, 31*st December*, 1836.

June, 1837, which were produced, and are as follows:

in account current with Bell & Grant. CR.

1836.	Interest to 31st December, 1836.					
July 7	By his remittance of 15 June, on Nevins & Co. - - -	Sept. 18	114	£15 12 4	£1,000	
26	Do 30 " W. Wright	26	96	13 3 0	1,000	
Aug. 24	Do 23 July, F. De Lizardi & Co.	Oct. 26	66	13 11 2	1,500	
29	Do 30 " Reed, Prescott, & Co.	31	61	3 2 8	375	0 0
Sept. 1	" Nett proceeds of a bill on Paris for Fcs. 30,000 - - -	Sept. 2	120	19 5 4	1,171	12 1
	" his remittance of 6 August on F. De Lizardi & Co. - -	Nov. 3	58	19 17 3	2,500	
	Do 15 " " T. W. Smith & Co.	11	50	13 14 0	2,000	
Nov. 7	Do 15 Oct. " F. De Lizardi & Co.	Jan. 9	–	–	1,800	
Dec. 23	" This amount refunded by Zimmerman, Frazier & Co., for so much overdrawn by them on ac. of hides ex Gambia - -	–	8	0 3 6	154	
	Discount, pr. contra - -	–	–	16 8 4		
	Balance of interest - - -	–	–	237 5 10		
31	Balance to the debt in new ac., bearing interest from this date -	–	–	–	27,861	2 5
				£252 3 4		
					£39,361	14 6

(Signed) BELL & GRANT.

DR. *Wm. H. Thorn, of New York,*

1837.	Interest to 2d June, 1837.								
	To balance of account furnished them -	153	£583	18	8	£27,761	2	5
Jan. 30	" Paid Franklin & Gr. bal. of their account	123	2	18	4	173	3	
Feb. 9	" G. Amie & Co., asts., in ac. shipment, pr. Robert Adams, and our charge on same, April 12 - - - -	51	12	4	5	1,748	11	
	" Notarial expenses in bill on Frankling & Gaschen, for £3,000 - - -	113		1	3	3	10	
Mar. 16	" G. Frederick Darby, drafts of 16 February, at 60 d., of May 18 - -	15	8	4	5	4,000		
June 2	" Balance of interest to the d. a. 5 per annum - - - - -	–		–		444	10	11
2	" Commission for paying, and cash reimbursements on £4,173, dfs. a - -	–		–		41	14	7
2	" Postage of letters to and from New York	–		–		4	18	6
			£607	7	1			
						£34,277	10	5
	Balance brought down - - -	–				11,392	3	4

To our acceptance to G. F. Darby's drft. 8 March, June 17 - -		2,500	
" our acceptance to G. Moore & Co., 13 April, July 18 - - -		1,131	19 10
" our acceptance to Frances, Bros., on ac. ship't per Margaret, and charges on same, Aug. 9 - - - - - -		2,059	6 1
" our half of the balance due a Colter's firm, Pernambuco, in J. A., in halves, between him and Mr. J. Devereux, June 19 - - -		132	13 8

in account with Bell & Grant, London. CR.

1837.	Interest to June 2d, 1837.		£ s. d.	£ s. d.
Jan. 10	By cash received, Franklin & Gaschen, in part of bill of £3,000 stg. - -	143	37 4 4	1,900
19	" Do of the same, for the balance of do -	134	20 4 2	1,101 7 1
31	" 2 bills of the same on Wright & Co., £1,000, March 22 - - -	72	9 17 3	
	" on Malcolmson & Co., 1,500 £1,500, March 24 - - -	70	14 7 8	2,500
Feb. 3	" Remittance 7 Jan'y, on W. Wright, April 6 - - - - -	57	15 12 4	2,000
7	" Do 14 Jan'y, " T. Wilson & Co., April 6 - - - -	52	21 7 5	3,000
14	" Commission on £2,800 ins. p., recredited Dec. 31 - - - - -	153	5 10	14
16	" His remittance of 23 July, on T. W. Smith & Co., April 8 - - -	45	12 6 7	2,000
16	" His rem. of 24 Jan'y, on T. Wilson & Co., April 20 - - - -	43	15 6 3	2,600
22	" Do 31 " " 24	39	5 6 10	1,000
Mar. 2	" Do 7 Feb'y, on G. Welder & Co., May 4 - - - -	29	4 15 5	1,200
16	" Do 16 " " P. Colesworth & Co., " 18 - - - -	13	3 1 11	1,500
25	" Do 23 " sundry, May 28	5	2 14 10	4,000
April 21	" Do 8 March, on M. Barn 5	28	5 4	70
	Balance of interest - -	–	444 10 11	
			£607 7 1	
June 21	Balance to his debit this day -	–	–	11,392 3 4
				34,277 10 5

His remittance 8th March, on W. Wright, due 15th June - - - £3,500

(Signed) BELL & GRANT.

LONDON, *2d June*, 1837.

His accounts with the plaintiffs was a continuing one from 1831; the balances were constantly carried forward. His transactions with them were constantly in letters. The plaintiffs were not here, nor was the witness abroad.

Upon being shewn by the plaintiffs' counsel twenty letters from the witnesses to the plaintiffs, and asked if those were not all the letters which he wrote to the plaintiffs in 1834, he said he thought they were, although he could not tell *certainly* without examining his letter book.

He went to Europe in June, 1839.

The account dated 31st December, 1838, was signed by him at that date a short time before I sailed. The defendant, after his return from Europe, lived at Perth Amboy, about thirty miles from New York. G. W. Bruen did not visit his father after the latter's return.

Before he went abroad, when he came to town, he usually stayed with his son, George W. Bruen.

When the witness failed, the deficiency of his assets must have been about $120,000.

Upon his cross examination he said that his account *with* G. W. Bruen shewed a balance at his failure of about $26,000 in his favor.

It was never reduced; he never paid him a cent. He put him down on his bankrupt schedule as a creditor for about $40,000.

He had made payments for witness which did not appear in the books. The defendant's counsel then requested witness to look at the account in his leger, which the witness produced and testified from. The defendant revoked his power of attorney to G. W. Bruen in 1835, and the revocation was published in the newspapers. The witness read it in a newspaper; they have been at variance ever since.

The defendant went to Europe in November, 1836, and returned, as witness thought, about April, 1837. During his absence H. Bruen held his power of attorney.

H. Bruen endorsed the defendant's name to the notes for $7,000.

They were for teas bought by winess of Haggerty. He never informed H. Bruen or the defendant after his failure that there was a debt due from him to the plaintiffs, for which the defendant was responsible. If the defendant in June, July, August, or September, 1837, had informed him that the plaintiffs made a claim against him under his guaranty, he would have secured him for his liability.

He never spoke to the defendant upon the subject of that guaranty from its date, until after the commencement of this suit. It might have been for three or four months after his failure that he continued to have the means of indemnifying the defendant against this claim. During that time he could and would have done it.

The plaintiffs never intimated to the witness that they *should* make a claim against the defendant, until some months after Mr. Grant's arrival.

There never was any agreement, verbal or written, between him and G. W. Bruen or H. Bruen, for a copartnership.

The accounts were kept in his own name, and as though they were

on his account. He and G. W. Bruen never had any agreement about a copartnership, but the witness supposed that he had an interest in his business. The witness considered himself as entitled to one-third, and G. W. Bruen to two-thirds. He never had any conversation with G. W. Bruen about it; but when he took up the business, H. Bruen said that an arrangement would be made whereby the witness should have one-third. Neither G. W. Bruen nor H. Bruen ever drew any thing out of the profits of the business as copartner.

He put down George W. Bruen as a creditor for the entire amount of his advances; he denied that he was a partner.

The Dorothea was a Philadelphia ship, and did not belong to the Bruens.

G. W. Bruen paid for witness, to Haggerty, $10,000, in 1837 or 1838, after his failure, which was not on his books, and remained unpaid. He had also paid custom house bonds which he was on for witness, which payments were not on his books.

The plaintiffs had received from witness debentures to between $4,800 and $5,000, which had not been credited, but should be credited to the witness.

The witness was also entitled to a credit of £856 9 6, for Samos wine, which was not credited in the account produced.

The witness also proved account to be in the handwriting of the plaintiffs, which was read as follows :

Corrected account of Wm. H. Thorne with Bell & Grant.

1837				
June 2	To balance at this date, per account furnished	–		£11,392 3 4
	Deduct amount of bills charged to him in a previous account, drawn under the guarantee of G. W. Bruen	£4,000 0 0		
	With commission on the same	40 0 0		
	And interest charged thereon	8 4 5		
			4,048 4 5	
				7,343 18 11
	Dr.	–		
	G. F. Darby's bill on his credit	3,500 0 0		
	Balance of cotton credit from Pernambuco	132 13 8		
	And interest thereon, as charged in account delivered	860 2 4		
			4,492 16 0	
				11,836 14 11
	Cr.	–		
	Remittances, as in former account	3,500 0 0		
	Amount reimbursed by Crooke & Co.	1,383 11 3		
	Balance of wool concern	23 3 10		
	Nett proceeds of Samos wine, deposited to pay bills drawn from Smyrna for cost of same, due 1st March, 1839, £4,187 18, at 110 0-0 £859 9 6			
	Less 68s. discount on same 7 0 8			
		848 8 10		
	Interest on these, as stated in former accounts	369 17 11		
			6,126 1 10	
	Balance due by W. H. Thorn, from 31st December, 1838	.		£5,710 13 1
	N. B.—The goods deposited for payment of the £4,000, drawn under the guarantee of G. W. Bruen, and the proceeds thereof, were erroneously credited W. H. Thorn, in the account delivered, are left of the above.			
	The difference between the former balance of			£6,354 3 9
	And the above			3,710 13 6
	Becomes thereby a charge against G. W. Bruen of			£643 10 3

(Signed) ROBERT GRANT.

New York, 30*th June*, 1839.

Witness does not recollect when he first saw that account; did not see it prior to his going to Europe; he returned from Europe in 1840. The goods applied on the £4,000 bills, were so applied by agreement with Grant; but the reason for making such application, he did not recollect. The proceeds of those goods overpaid the bills and interest £204; but this difference was not credited in the account last produced. The proceeds of these goods amounted to £4,461 2 0.

The defendant's counsel produced, and proved by the witness, the six following letters from the plaintiffs to the witness, which were read, and are as follows:

"*Duplicate.*"

LONDON, 18*th March*, 1831.

Mr. W. H. THORN, *New York.*

SIR: Confirming the above copy of our letter of the 14th, the purport of the present is to enclose one (sent to us open) from Messrs. J. L. Payson & Co., of Messina, with bill of lading and invoice of their shipment for your account, by the Autumn, and for balance whereof they draw upon us £1,400 4, which we accept and pass to your debit, as due from the 25th May.

The sale of ashes, as mentioned in our last to take place the following day, went off very badly. Hardly any buyers, and no offers beyond 36*s.*, at which the greater part of the quantity put up had to be taken in. This is a very sorry prospect of our market.

We remain, &c.

LONDON, 22*d March*, 1831.

SIR: We have received, since the above, your letter of the 23d ulto., with an enclosure for Messrs. Archias & Co., of Marseilles, which we forward to them to day, with a confirmation of the credit you give them on us to the amount of £2,000, for the purpose of making advances on consignments, and which we will accordingly thank you to have guaranteed to us, as you propose, by Mr. Matthias Bruen. As yet we do not meet with a purchaser for your parcel of Cuba tobacco, by the Freak; we ask 18*d* for it all round, but shall think it advisable to take less, if a buyer offers for the whole. The ashes, by the Sovereign, we fear must remain on hand some time. We shall endeavor to send you, by next packet, the landing certificate of the tobacco.

We are always, &c.

"*Duplicate.*"

LONDON, 6*th May*, 1831.

WM. H. THORN, esq., *New York.*

SIR: Only your letter of the 7th ulto. has reached us since the above. The new credit you are likely to require for £2,000 to £2,500 on Messina, shall be forthcoming when wanted. The insurance on my shipments, in consequence, is, we see, to rest in this instance with us, but not altogether with your consent, thinking no doubt that our premiums here are too high. We hope that may not be the case, when we come to effect the insurance, as we would much rather earn our commissions in that regular way, when not otherwise disadvantageous to you, than charge 1½ per cent. on the drafts only. We notice your proposal, however, in this respect, and shall, if necessary, endeavor to meet your wishes. Herewith we send you account sales of the 98 casks of ashes by the Sovereign, (C,) 1 *a* 98, producing net to your credit £356 10 1. Cash from the 15th October next. For the remainder of the T mark, we are still without a purchaser; and the article, we are sorry to say, is not improving. The Cuba tobacco is also yet on

hand. We enclose a letter from Mr. George Moore, of Trieste. That friend acquaints us that he wishes, in consequence of what you had suggested, that we should increase the credit we gave you for advances on his account to £3,000; and we now comply with his request, in extending the credit to this latter amount. We cannot, at same time, well understand why the larger sum should be required, before the $2,000 originally credited, or any part of it, should have been used. This, however, regards our Trieste friend and you, more than us, and it is not at all meant as an objection.

We remain, sir, your ob't serv'ts,

BELL & GRANT.

22d March, 1834.

SIR: Since the date of the above copy of our few last lines, we have been favored with your letter of the 15th ultimo, and we duly note its contents. We are quite aware that these are not times to be too pressing with our friends in the United States, and we shall wait patiently for the reimbursement you promise, well assured, from the punctuality you have always shewn, that this will not be delayed beyond the time absolutely necessary to look about you. Meanwhile, we have to add a little to the calls upon you, in consequence of Messrs. T. L. Payson & Co.'s valuation on us for the cargo of the William Jones, of which you will find the particulars in their enclosed letter, their draft upon us being at 90 d., date from the 27th ulto. - - - £1,478 0 6
for which we debit you with commissions, 1 per ct. - 14 15 7
and postages - - - - - - 15 2

£1,493 11 3

By our letter of the 6th inst., we prepared you for our not making insurance on this cargo, and the same is accordingly left to you; but had we been aware that the articles were such as we usually insure here, we certainly should have covered them ourselves. On this subject, we must again entreat your attention to what we mentioned in our said letter of the 6th, as it becomes quite necessary that some fixed understanding should be come to, as to insurances on credits opened.

We remain, very truly, sir, your ob't serv'ts,

BELL & GRANT.

"*Duplicate, original per Ontario.*"

LONDON, *29th March*, 1834.

W. H. THORN, esq., *New York.*

SIR: We have now to acknowledge the receipt of your favors of the 22d ulto. and 3d inst.—the former remitting £2,000, C. A. & E. Heckcher on George Wildes & Co.; and the latter £2,000, Rogers & Co. on N. M. Rothschild—both at 60 days sight, and which shall duly appear to your credit. We are glad to find that we had anticipated your wishes with regard to consignments for the present from Messrs. Archias

& Co., and Messrs. R. Anderson & Co.—the former of whom have already acknowledged the receipt of our instructions, and will accordingly refrain business until better times; but we find that Messrs. Robt. Anderson & Co., previous to our instructions reaching them, had undertaken a consignment, of which you will learn the particulars in the letter we now enclose from these friends, say a parcel of fruit and rags, by the Swedish brig Carl Daniel, Captain T. D. Sagus, to the amount of about $6,000, on which an advance would be taken, and which we must therefore attend to. Messrs. Thos. Ashmore & Co., of this place, had also for some time been preparing a shipment of drugs, upon encouragement they had received for it, (from yourself, we believe,) and which we therefore could not well refuse, especially as it is not to any heavy amount. You will find enclosed the documents of the same day of 8 casks tartaric acid, 3 chests gum ammoniac, and 5 casks antimony regalas, by the Ontario, Captain Sebor, together with our account of insurance and advance, amounting to £311 4, for which we debit you as cash from the 27th July. And we remain.

Messrs. Ashmore & Co. will send you the certified invoice themselves.

LONDON, 29*th April*, 1837.

Mr. W. H. THORN, *New York*.

SIR: We beg leave to refer to and confirm our last respects of the 6th inst., since when we have received your much esteemed favors of the 1 and 8 ulto., this last remitting

£2,000 }
1,500 } Wright & Co. on W. Wright, at 60 days sight, and
70 Peel on Burwin,

£3,570 together, which are accepted, and when encashed, the amount shall be put to your credit.

Fully relying on the punctuality of your engagement to remit to us, by the packet of the 1st proximo, an equivalent amount, we have shewn immediate honor to Mr. Darby's drafts on us, £3,500, of the 8th ulto., for which we debit you accordingly.

Enclosed we hand you a letter of the $\frac{13}{15}$ instant, from Messrs. Geo. Moore & Co., of Trieste, with account sales of your 500 bags of Havanna coffee, per brig Baron Peadwoginich, together with an extract of your account current with them, for the balance of which last they have drawn upon us £131 19 10, at 3 m. from 11 ditto, which we have accepted, and for which we debit you.

We are much disappointed at not receiving any letter from you by the Independence, which is arrived, and left your port so recently as the 10th inst., the more so as we had reason to expect remittances from you, by that opportunity, to the extent of $6,500.

We trust, however, that the next packet from your side will bring them. In the meanwhile we beg to advise you of the safe arrival, at Leghorn, previous to the 19th inst., of the George Cabot, from Batavia,

with 2,700 small bags of pepper, and about 5,287 picculs of sugar; but we fear they go to a very bad market.

We remain, very respectfully, sir,
Your obedient h'ble servants,
BELL & GRANT.

The defendant's counsel also produced and proved, by the witness, a copy of a letter from him to the plaintiffs; which was read as follows:

NEW YORK, 23*d February*, 1831.

Messrs. BELL & GRANT.

GENTLEMEN: I have the pleasure to acknowledge the receipt of your letters of the 30th of December and 14th January. By the former, I see that you had been so kind as to open a credit to Messrs. John L. Payson & Co., of Messina, for £2,000, for which I feel very grateful to you.

The Autumn made a famous passage out, and Mr. Moore writes very encouragingly respecting her cargo; and the prospect for her return cargo is very favorable. Mr. Darby, at my request, wrote you by the last packet respecting a credit to be opened to Messrs. Archias & Co., of Marseilles; to be used by them in making advances on merchandise to my address, on condition of the insurance being made in London, France, or this country; but from your remark in yours of the 30th December, respecting insurance, I conclude that an arrangement of this kind will not meet your approbation, and I have, consequently, requested him to write to you again, to request you to open a credit, on condition that the bill of lading and invoice be forwarded to you with orders for insurance.

My friends in Marseilles might secure many consignments for me if I could put them in a situation to make the necessary advances; and I therefore hope you will oblige me by opening the credit I ask for, and, if you require it, Mr. M. Bruen will give you his guarantee. I enclose a letter from Messrs. Archias & Co., which you will forward to them, should you think proper to open the credit; otherwise I do not wish you to send it, as it relates entirely to this credit, and the manner in which the advances are to be made. It is understood that no more than £2,000 are to be drawn for at any one time, and that the credit is then to be considered at an end until your advances are covered by remittances from me, when you will again renew it.

I remain, &c.,
W. H. THORN.

The defendant's counsel also produced and proved, by the witness, a copy of the letter from him to Archias & Co., alluded to in the last letter; which was read as follows:

NEW YORK, *February* 23*d*, 1831.

Messrs. ARCHIAS & CO., *Marseilles*.

GENTLEMEN: Your esteemed letters of the 3rd, 13th, and 24th De-

cember, and 3rd and 13th January, are received, and shall be replied to by next Havre packet.

The present serves to advise you that I have requested my friends, Messrs. Bell & Grant, of London, to open to you a credit to the extent of £2,000, to be used by you in making advances on merchandise to my address. I have done this in order that you may, at any time, be in a situation to make advances to such of your friends who may be disposed to make shipments to this quarter.

I must caution you to make advances on such articles *only* as are saleable in this market.

Muscat, in boxes, should be sent in small quantities, as the sale is tedious. Claret, in boxes and casks, is generally saleable. Marseilles Madeira can be sold in large quantities, and I would prefer to advance on the latter article in preference to any other. As to the amount to be advanced, much will depend on the person to whom it is made; to such as you know to be responsible, you may advance two-thirds of the market price, but, as a general rule, 50 per cent. ought to be the extent. The conditions of the credit are, that you are not to draw for more than £2,000 at any one time, and then the credit is to be considered at an end, until it be renewed by Messrs. Bell & Grant, and that the bill of lading and invoice are to be forwarded to them, with orders for insurance.

I remain, &c.,

W. H. THORN.

The defendant's counsel also produced, and proved by the witness, copies of the three following letters from him to the plaintiffs; which were read as follows:

NEW YORK, *3rd March*, 1834.

Messrs. BELL & GRANT.

GENTLEMEN: Above is a copy of a few lines I wrote you on the 22d ult. I have since been favored with your letter of the 14th January, including a copy of my account current, which shall be examined.

Inclosed you will find Rogers & Co.'s bill of this date, on N. M. Rothschild, for £2,000, which please place to my credit. I regret, exceedingly, that it has not been in my power to make you a remittance in full, by this packet, but the difficulty of making negotiations is so great, that I must claim your indulgence until next packet. I have informed Messrs. R. Anderson & Co., and Messrs. Archias & Co., that the times are such as to render consignments no longer desirable; which I hope will reach them in time to prevent any further draft on you.

I remain, &c.,

W. H. THORN.

NEW YORK, *24th April*, 1834.

Messrs. BELL & GRANT.

GENTLEMEN: I have received your letters of the 27th February, March 6, 7, 14, to which I now reply.

In regard to insurance, I believe it was fully understood between us, that you was to attend to it in all cases where the premium did not exceed one per cent., and I have accordingly always had an open policy, subject to a full return premium on such goods as may be insured in London, so that I am always provided with insurance.

I have read what you have been pleased to write to Messrs. Archias & Co., on the subject of consignments under advances, which meets my warmest approbation, as you will have seen by my letter of March 3d.

The William Jones and Empress arrived here some days since, and I note that J. L. Payson & Co. have drawn on you on account of the cargo of the former, in £1,478 0 8, and Messrs. Bell, De Tough & Co., on account of the latter, in £657 13. I also note that George Moore had closed the cargo of the "Rhine," and that the balance against me in that affair is no less than £699 11, which shews a very sorry result; notwithstanding this, I have no reason to complain of our friend Moore, as I am convinced he acted for the best. Enclosed you will find J. N. Gozler's bill on T. Wilson & Co., for £1,500, Dekham & Iselin, on Rougernout & Bro's, for £178 14 6.

I have enclosed to Messrs. J. & N. Littleton & Co., Liverpool, for acceptance, Dekham & Iselin, on R. Twickenbuck & Co., Liverpool, payable in London, for £100; C. & A. Batre, on Kull & Corment, £110, in all, £1,888 14 6; which please place to my credit. As I have remitted to you pretty freely in J. N. Gozler's, on T. W. & Co., I have come to the determination to take no more; but my broker having engaged the above sum without consulting me, I could not avoid receiving it. Money is more plenty, and business has revived very much, still things are not settled, and I fear that no permanent improvement can take place for some time.

I remain, &c.,

W. H. THORN.

NEW YORK, *February* 16*th*, 1837.

Messrs. BELL & GRANT.

GENTLEMEN: I wrote you on the 7th instant; since when I have received your esteemed letters of December 30th. Your account is credited for £322 9 9, for advances of fruit per Isaac Clason. Enclosed you will find Robert L. Patterson's bill, at 60 days sight, on Colesworth & Powell, for £1,500, which please place to my credit.

Mr. G. F. Darby has, at my request, and for my accommodation, drawn on you to my order for £4,000, in two bills for £2,000 each; which sum I have agreed to remit you in 50 days hence, together with 1 per cent. commission, in such bills as Mr. Darby shall approve of.

I have given him Mr. G. W. Bruen's guarantee, and moreover lodged with him business notes for more than the amount of said credit, in order that the security may be perfectly satisfactory to him, as well as to yourselves. I am well aware it is not agreeable to you to extend your liberalities in times like the present, and Mr. Darby hinted the

same to me; but in assuring him that I intended to remit by every packet, to balance our old account, he finally consented to accommodate me.

You may also expect remittances for account of Messrs. Bell, De Tough & Co.

I am making every effort to sell your sherries, and hope to do so in the course of next month.

I remain, &c.,

W. H. THORN.

The witness further testified, that the bills for £3,500, drawn by Darby on 8th March, 1837, were drawn on an arrangement in all respects similar to those drawn by him for £4,000 on 16th February; there was a like guaranty furnished by him to Darby, signed by George W. Bruen; and that the bills for £4,000 and £3,500 had no reference to Mr. Bruen's guaranty.

The rate of interest charged to the witness by the plaintiffs in their accounts was five per cent.

Being re-examined by the counsel for the plaintiffs he further testified, that all the defendant's endorsements were paid before he went to Europe; the proceeds of these endorsements had gone into the defendant's business; the only endorsements afterwards, were the $7,000 endorsed by H. Bruen in the defendant's name.

The bills drawn by Darby for £3,500 and £4,000, had no reference to the defendant's guarantee.

G. W. Bruen's standing was very good when he gave the guarantees.

H. Bruen lived in Newark, in New Jersey, in 1836 and 1837.

The witness remitted the bill of Wright & Co., credited in the account of 31st December, 1838; he got it for his note, endorsed by G. W. Bruen, who paid Wright & Co. This payment did not appear in his books; if all these items for G. W. Bruen were charged, it would swell the balance due him to near $40,000.

Upon being again examined by the plaintiffs' counsel, and asked what was the arrangement proposed by H. Bruen when witness commenced the business, he said that H. Bruen told him he had better take up the most profitable part of the business, and when H. Bruen got rid of his embarrassments, a concern would be formed, in which the witness would have a third.

He could not say that the Bruens recommended or introduced him to their friends; G. W. Bruen was occasionally at witness' office.

From 1830 to 1835, witness was in expectation that such an arrangement would be formed.

There was no statement of a profit and loss account by which any thing was passed to any person's credit.

In 1835, H. Bruen then said that he would not come into the concern; he never conversed with G. W. Bruen about it.

G. W. Bruen brought in the capital. It was put to the credit of the defendant until Dec. 31, 1835, then the account was changed into

the name of G. W. Bruen, and the balance put to his credit of $54,773 $\frac{37}{100}$; of that credit there is a balance of upwards of $26,000 still due.

Two items in the book, viz: 27 Oct., 1837, $31,884 $\frac{31}{100}$, and on 24 Oct., 1837, $58,497 $\frac{62}{100}$, were sums which had been previously taken out by G. W. Bruen, a long time, probably a year before the date of the entry; they were probably bills receivable. He was in the habit of making monied arrangements for the witness.

On the 27 Oct., 1837, there is a credit to him of $22,494 $\frac{73}{100}$.

These are the dates of the ledger posting; but the transactions thus entered probably occurred long previously, and at various times.

Nothing was said about the defendant's guaranty, one way or the other, when the Darby bills for £4,000 and £3,500 were negotiated.

When he applied to Darby for £3,500 bills, he engaged to make a remittance to the plaintiffs, but not for any specific amount. Witness received the money on the sale of the Darby bills of £3,500.

He did not give the £3,500 to G. W. Bruen, but used it in his business.

The plaintiffs' counsel produced an inventory, which was read as follows:

Inventory of goods deposited with Robert Grant, esq., as security for four thousand pounds sterling.

E S. F F	23 casks French madder - - -		268 Front st.	45195 lbs.	11 c.	$4971	45
F. S. F	5 do do do - - -		do	9895	10 c.	989	50
"	2 do do do - - -		31 South st.	3950	10 c.	395	00
	16000 sheepskins - - - -		Brooklin.	16000	50 c.	8000	00
	602 qr. casks Marseilles Madeira - -		30 South st. Go.	180.60	30 c.	5418	00
[B S]	8 hhds.	56 packages Sherry					
[G. S.]	1 do						
(A)	6 butts						
"	9 hhds.	Wines per ship Ontario	98 Pine.	(My advances) -		4915	00
"	4 qr. casks						
[A]	3 butts					$24688	95
"	9 hhds						
(B)	5 do						
"	1 qr. cask						
[B]	3 butts						
"	7 hhds.						

NEW YORK, *July* 8, 1837.

E. E.

W. H. THORN.

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The witness said that this was an inventory of property which he gave to Grant, which Wilson & Brown, agents of Grant, received. He did not know who had the debentures.

When he stated the account of 31 Dec'r, 1838, he considered it correct; there were several pendencies. Grant stated the account, and the witness approved of it.

He did not recollect when he first saw the account entitled "The corrected account."

The remittance of Wilson & Brown do not include any remittance for the debentures; they are the only item of account not included in some of the accounts produced.

When Grant arrived, he pressed for payment or security of his account. The witness told him that he could not do more than he did, by which he meant he could not do it without injustice to others, but he could and would have protected the defendant against any liability under his guaranty.

Grant applied to him soon after his arrival. He supposed that Grant and the defendant were in intercourse together; he did not know that they visited; he never saw them together.

He did not recollect any thing about the guaranty, and therefore did not mention it to the defendant.

Before the defendant's revocation of his power to G. W. Bruen, he and his sons were intimate together, and H. Bruen afterwards was confided in by the defendant.

He thought that G. W. Bruen was previously in the habit of opening his father's letters.

When the witness failed there was, as he thought, an inventory made out, but it was not done by him or entered on his books.

G. W. Bruen did not put any specific sum into the business of the witness; but what he received from him averaged about $30,000.

G. W. Bruen and H. Bruen failed in 1828. The witness was then about 24 years of age, and had no capital.

The amount received from G. W. Bruen was originally placed to the credit of the defendant. G. W. Bruen was then doing business in the name of his father, probably because he was in debt so that it was not safe for him to do business in his own name.

He could not say whether G. W. Bruen's capital came from the assets of the old firm; he does not know where it came from.

In the account of G. W. Bruen, in the witness's ledger, under date of April, 1837, were the following items on the debit side:

7 April	- - - - - -	$ 900	
7 "	- - - - - -	4,000	
12 "	- - - - - -	300	12
	And in April, 1836:		
Bills receivable	- - - - - -	36,514	48
Sundries	- - - - - -	11,648	50
2 April	- - - - - -	6,000	

2 April	- - - - - - -	$600
4 " Cash	- - - - - - -	3,500
13 " "	- - - - - - -	3,500

In April, 1837, on the credit side:

3 April, Cash	- - - - - -	200
7 " "	- - - - - -	3,958

And in April, 1836, on the credit side:

2 April	- - - - - -	6,500
4 "	- - - - - -	3,000
8 "	- - - - - -	1,000
15 "	- - - - - -	2,000
9 "	- - - - - -	2,600
30 "	- - - - - -	4,000

All cash items.

He supposed that the sums thus received by G. W. Bruen were on account of the witness owing him.

In the witness's journal of Oct. 27, 1837, there is an entry of G. W. Bruen to sundries $11 $\frac{10}{100}$, was for error in account; all the rest appeared to be bills receivable, taken out previously, of which no previous entry was made in the books, but they appeared in his account current with G. W. Bruen amongst his papers, which was rendered annually or semi-annually, but never settled.

Geo. W. Bruen used to take out bills receivable, as he thought my business or his necessities required, crediting them as he took them, and when he paid in money it was credited to him; he did it as a person interested in my business, as a proper thing in the course of my business; this was his habit from the beginning.

If H. Bruen, or the defendant, had applied to the witness to know the state of his accounts with the plaintiffs, he would have told them. Neither G. W. Bruen nor H. Bruen had looked at his books either before or since his failure, although they might have had access if they wished.

He thought that the account dated 2d June, 1837, was sent from London; if so, it would have been received here in the month of July, and perhaps earlier. Some of the bills on the plaintiffs matured in June, 1837. If enquired of in July, 1837, he could not have told the precise amount of his debt to the plaintiffs, but could have stated, generally, that he was in their debt to a large amount; he could have told the amount with reasonable certainty.

The plaintiffs' counsel produced and read the following power of attorney and revocation, the execution thereof by the defendant being admitted:

Know all men by these presents, that I, Matthias Bruen, of Perth Amboy, New Jersey, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, George W. Bruen, of the city of New York, merchant, my true and lawful attorney, for me, and in my name, place, and stead, to manage, conduct, and carry on,

all and singular, my business and affairs, of what nature or kind soever; to take and acquire for me, by purchasing, bargaining for, and merchandizing, all goods, wares, and merchandize, goods, chattels, stocks, property, effects, lands, and tenements; all and all manner of contracts, covenants, and dealings therewith; to make, execute, and carry on all sales, transfers, hypothecation pledges, mortgages, and dispositions thereof; to make and perfect all and all manner of contracts, covenants, promises, bills of exchange, promissory notes, acceptances, endorsements, bonds, deeds, conveyances, and assignments; to make, execute, and acknowledge, to receive, open, and answer letters, claims, demands, and disputes; to liquidate, adjust, compromise, submit to arbitration and release; to sign checks, endorse notes, and transact all business of whatever kind; and also, I, the said Matthias Bruen, do hereby give unto my said attorney, full power and authority, for me, and in my name, to sell and dispose of, mortgage, or lease any house, and all houses, and any and all lands, and tenements, to me belonging or appertaining, and wheresoever situated; and to make, execute, and deliver, any proper deeds of conveyance, for me and in my name, of the same in fee, or upon condition, or for a term of years, that may be requisite therefor in the premises; giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatever, requisite and necessary to be done, in and about the premises, as fully, to all intents and purposes, as I myself might or would do if personally present; with full power of substitution and revocation; hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do, or cause to be done by virtue hereof. In witness whereof, I have hereunto set my hand and seal, the 19th day of December, A. D. 1832.

M. BRUEN. [SEAL.]

Sealed and delivered in presence of—
RICHARD J. WELLS, *Not. Pub.*

Whereas I, Matthias Bruen, of Perth Amboy, in the State of New Jersey, on or about the nineteenth day of December, one thousand eight hundred and thirty-three, by a certain writing or power of attorney, did appoint George W. Bruen, of the city of New York, merchant, my true and lawful attorney, among other things, for me and in my name, to manage, conduct, and carry on, my business and affairs, of what nature or kind soever, as by the said power of attorney, recorded in the office of the register for the city and county of New York, in Liber three of Powers of Attorney, page 71, reference being thereto had, will more fully appear.

Now, know all men by these presents, that I, the said Matthias Bruen, for divers good causes and considerations me thereunto moving, have revoked, recalled, countermanded, and by the presents do revoke, recall, countermand, and to all intents and purposes make null, void, and of none effect, the said writing or letter of attorney, and all powers and authorities therein and thereby made, granted, and given to the

said George W. Bruen, and all other things therein contained, and all other powers of attorney whatsoever given by me to the said George W. Bruen, and all authority or powers therein whatsoever contained.

In witness whereof, I have hereto set my hand and seal, the seventh day of July, one thousand eight hundred and thirty-six.

M. BRUEN. [L. S.]

Sealed and delivered in the presence of—
A. H. ROBERTSON.

The plaintiffs' counsel also produced and offered to read in evidence the following letters of the plaintiffs to W. H. Thorn, to each of which the defendant's counsel objected as not admissible or competent evidence; but the court overruled the several objections, and admitted the letters to be read, to which the defendant's counsel excepted; and the letters were read, as follows:

LONDON, 22*d January*, 1831.

Mr. W. H. THORNE, *New York*.

SIR: We have none of your favors since the date of the preceding copies of our two last letters.

In compliance with a wish expressed to us by Mr. George Moore, of Trieste, we have now to open a credit to you to the amount of two thousand pounds, (£2000,) to be used to the extent of one-half, or at most three-fourths, of the cost of any consignment you may make or procure to be made to him, and your drafts, for which we hold ourselves ready to accept for Mr. Moore's account, on your furnishing us with a bill of lading and copy of invoice; also, with orders for insurance, when it may be deemed eligible to effect it in this country; but if made in the United States, the policy to be assigned over and deposited with our mutual friend, Mr. G. F. Darby, on Mr. Moore's behalf; the credit to remain in force till otherwise ordered, and to be understood as being for £2000, to be pending at any one time.

We shall be glad to see good arise out of this arrangement to your and our friend, Mr. Moore.

And we remain, very truly, &c.,
BELL & GRANT.

Mr. Moore, in his letter to us, requests we may increase the credit to Messrs. Payson & Co., of Messina, to £1800; but this is already provided for, by our having opened one for £2000. Mr. Moore promises to remit us shortly about a like sum, £1800, for your account.

B. & G.

LONDON, 22*d June*, 1831.

W. H. THORNE, esq., *New York*.

SIR: The annexed is a copy of our last. We have since had the pleasure of receiving your favor of the 9th and 23rd ult., the former by the James and Henry Cummings, which vessel is arrived, and now landing your 14 cases of Cuba tobacco. In that article, we regret to

say, we are making no progress yet, or can we make sales for the present of any more of your ashes, such is the dull and depressed state of our market.

You favor us with an extract of what Messrs. Archias & Co., of Marseilles, mentioned as the difficulty they experienced in operating on the credit for advances on consignment, in consequence of insurance being stipulated to be made in London, a difficulty we hear of for the first time, in cases of this nature, and which they did not start on acknowledging the credit when opened; nor can we, with all deference to these friends, think it now well grounded, being quite sure that whatever premiums may be in the U. S., (and these are as you know, we have in many instances given way,) they are as low in London, as they are at Marseilles; and that the insurance, all things considered can be better and more securely effected here than there. We have addressed Messrs. Archias & Co., on this subject, and expressed our hope that the shippers, on due consideration, will see no objection to comply with what has every where been a fixed custom, especially as at the premiums now going, say about $1\frac{1}{4}$ per cent. on all, except very *very* susceptible goods, there can be no disadvantage in their doing so. We hope this may smooth the objection made, which we must again say surprises us, as we are at this moment doing insurances for other Marseilles houses, on their own French vessels, from their own colonies to Marseilles; and it is not likely they would commit them to us if they could do them cheaper, or even as cheap as we do them here. It is always our wish when we open a credit to make it efficient for our friends, and should be very reluctant to throw any unnecessary obstacle in the way; but we think there should be some more cogent reason for our relinquishing the insurance than is given in the present instance.

We observe that the Autumn has been finally fixed for the cargo of sugars from Matanzas to Leghorn, and we hope she will make a good voyage of it; but the letter you will find enclosed from Messrs. Bell, De Tough & Co., gives rather a desponding state of their market.

These friends have drawn upon us for the cost of 100 bags of pressed rags, shipped for your account in the brig "Hope," Capt. Hooper, £675 4 4 of which, and of the insurance effected on £700, we annex a note, amounting together to £705 2 0, to your debit as cash from the 10th September. The premium in this case you will say exceeds that we have just mentioned in writing respecting Messrs. Archias & Co., but rags are considered as very liable to damage, and the premium is high, say $2\frac{1}{2}$ per cent.

We remain, very truly,

BELL & GRANT.

LONDON, 28*th April*, 1834.

W. H. THORN, esq., *New York*.

SIR: Except your few lines of the 15th ulto., we remain deprived of your favors, since we wrote to you as above on the 5th inst.; but we trust that we are to attribute this to the non-arrival only of any of the

packets later than that of the 16th March, and that those now due will bring us the wished for intelligence from you.

Messrs. Robert Anderson & Co., of Gibraltar, have made an advance to Messrs. Parladi & Co., of Malaga, on the shipment consigned to you by the Carl Daniel, of - - - - - £761 14

For which, and commission 1 pr. ct. - - - 7 12 4

Postages - - - - - 10 8

We debit you, as cash on the 5th July next - - £769 17

And Messrs. Stanley, Black & Co., of Montevideo, notwithstanding the expectation you were under that the credit you last opened to them would not be availed of, have drawn upon us also for cost of shipment, made to you in the Velocity, Capt. Stanburgh, under date of the 25th January, at 60 d's, for - - - - - £2,098 10 11

Which we pass to your debit, with commission, 1 pr. ct. - - - - - - 20 19 8

And postages - - - - - 18

Together, as cash from the 30th June next - £2,120 8 7

And we must beg the favor of your attending to the reimbursement of these sums.

Inclosed you will find a letter from Messrs. Bell, De Youghe & Co., of Leghorn, who have remitted us, on your account, £335 6 7, in a bill due the 10th May, which we place to your credit.

And we remain, sir, your ob. servts.,

BELL & GRANT.

LONDON, 22*d May*, 1834.

Mr. W. H. THORN, *New York*.

SIR: We beg leave to confirm our last letter of the 6th inst., since which we have received yours of the 23d and 30th ulto., the former a remittance for £1,888 14 6, in 4 bills on sundry, and the latter £1,520 10 5, in 2 bills on ourselves, all at 60 days sight, and for which, when encashed, you shall have credit. And now that the late pressure for money appears to be subsiding in the States, we make no doubt you will, in a few packets, place us in funds for the remainder of our dependencies. Meanwhile, we have received a letter from Messrs. Stanley, Black & Co., of Montevideo, acquainting us that you have opened a further credit upon us, in their favor, for the sum also of £4,000, of which we have never yet had the least intimation, either from yourself or from Mr. Darby. Messrs. St., Black & Co., add, that in consequence of your instructions, they mean to employ the credits alluded to in the purchase of produce, to be shipped by the American brig Laura, and American ship Othello, the invoices and bills of lading for which they would forward to us in due time. We shall, therefore, remain in an unpleasant predicament with regard to their drafts, until we receive your confirmation of this last mentioned

credit for £4,000, and which, if you really have opened it, would have been very irregular in you not to have advised us of the time.

With reference to what we lately wrote you on the subject of the double insurance pr. Harp, we now annex a memorandum of the premium returned thereon, for which we credit you in £5 19 8, agreeably thereto; meanwhile, in consequence of what you say in your letter of the 23d ult., respecting insurances, it is our intention to return to that subject in our next.

We remain, very respectfully and truly, sir, your most obed. and humble serv'ts,

BELL & GRANT.

LONDON, *23d June*, 1834.

W. H. THORN, esq., *New York*.

SIR: We are very sorry to find that we have not had occasion to address you since the 22d of last month, or to have been favored with any letter from you since that time. We have now to advise that, for a shipment to you by the brig Othello, Messrs. Stanley, Black & Co., of Montevideo, have drawn upon, for your account under date of the 7th of March - - - - - - £1,835 18 6
For which, and our commission 1 pr. cent. - - - 18 7 2
And postages - - - - - 16

We debit you, as cash from the 14th Aug. - - £1,855 1 8

And we are in daily expectation of advice of further drafts upon the additional credit of £4,000, which we mentioned to you in our last they had received from you, but of which we are still without any notice from you.

Mr. W. Payson, of Messina, has also drawn upon us for your account, as you will find explained in the letter we now enclose from him, £129 18, which we have accepted and placed to your debit from the 1st Sept. next; and we have to enclose a letter from our mutual friend, Mr. G. Moore, of Trieste, with the account of your consignment to him of 200 bales of cotton, by the Minerva, from Charleston, the balance of proceeds whereof he has remitted to us for your account, which enables us to send you the note you will find herewith of the transaction showing a balance due to you upon it of £613 2 9, which shall appear to your credit from the 2nd July, and we hope will prove satisfactory. In our last letter, we said that we should take an opportunity of returning to the subject of insurance, which is one that we certainly wished to see placed on some more defined footing than it has of late been allowed to stand.

We have no recollection of any such agreement existing between us, as that you allude to in your letter of the 24th April last, namely, that we were to attend to all such insurances only as could be done here at not exceeding 1 per cent. Our understanding on this head was, that when drawn upon for shipments from Europe, we were to insure all the articles, if to be effected at a moderate premium, except those very subject to average, and on which high premiums are required here; but

be this as it may, we appear not be sufficiently understood so as to know when we ought or ought not to insure; and in order to set this rather important point at rest, we will for the present, and until we come to a settled arrangement, consent to forego all insurances whatever that cannot be accomplished here at or under the 1 per cent. premium, but as it will never suit us to carry on business in this way, we have now to propose that we come back to what was really our original agreement in this respect, namely, viz:

1st. That every shipment made from Europe, by a credit upon us, shall be insured here at the lowest premium in our power; the articles of shumac, juniper berries, rags, and paper, and others equally susceptible, to be warranted free of particular average, which will always enable us to do your insurances at a very reasonable premium, and such as under all circumstances ought not to be objected to.

2ndly. That insurances from countries out of Europe shall also be committed to us in all cases where it can be done with convenience, that is to say, where timely advice can be given to make the insurances, and when there is no particular reason to suppose that the premium here will be excessive; your answer on these points as early as convenient will oblige us, as, until received, we must, as already explained, forego all insurances beyond 1 per cent, and we repeat that business on such a footing would not be acceptable, or indeed cannot reasonably be expected, that we should for mere banking commission forego the advantages which the credits fairly entitle us to. We say this in the perfect spirit of friendship, and hope it will be received by you in the same way, and have your best attention; remaining,

Your ob't serv't,

BELL & GRANT.

We have just received advice of Messrs. Bell, De Yough & Co., having drawn upon us for your account £84 3 4, of the 4th inst., at 3 mos., which shall be accepted and passed to your debit.

B. & G.

28*th June*, 1834.

SIR: Without any of your favors since we addressed you on the 23d, as per copy annexed, we have only at present to mention, that Messrs. Stanly, Black & Co., of Montevideo, having drawn upon us upon the new credit we have recently alluded to, for £1960 18 7, at 60 days, dated the 5th April last, and due the 29th August next, we have accepted the same and shall pass it to your debit, subject to your confirmation of the credit, and otherwise to be account of the drawees themselves.

We remain, sir, your ob't servt's,

BELL & GRANT.

The above draft is for a shipment of tallow and wool by the same.

LONDON, 14*th July*, 1834.

W. H. THORN, ESQ., *New York*.

SIR: The detention of the above enables us to enclose a letter re-

ceived for you to-day from Messrs. Bell, De Youghe & Co., and to advise, that these friends have drawn upon us for your account, £480 2 2, at 3 m., from the 2nd inst, for which we debit you the same, being for a shipment of marble and oil by the Delight, Capt. Storrs, on which (agreeably to what we lately wrote you,) no insurance is made by us.

We remain, your ob't servt's,

BELL & GRANT.

LONDON, *28th August*, 1834.

Mr. W. H. THORN, *New York*.

DEAR SIR: We beg your reference to our letter of the 14th inst., since when we have not been favored with any of yours, but there has been presented to us your letter of credit of the 7th May, in favor of Mr. Andrew Gifford Wylie, to whom we have in consequence paid £50, and debit you therewith. The Robert Adams has arrived at Trieste, and Mr. Moore has made some partial sales of the minor articles composing the cargo, but the coffee and hides were yet on hand. We shall be glad to hear of further progress, and to receive a remittance on your account; and we shall moreover feel obliged by your attention to what we said on this subject in our last.

We remain, your ob't serv'ts,

BELL & GRANT.

The 21st October, 1824.

SIR: We beg leave to refer you to, and confirm the accompanying copy of, our last respects of the 14th instant, since which we have had the pleasure to receive your always acceptable favors of the 23d and 30th ult., the former remitting for account of Messrs. Bell, De Youghe & Co., £1,000 in Joseph's dft. on Rothschild, which is accepted, and shall be passed to their credit at maturity, being against the proceeds of their consignments to you pr. Henry & Empress, and £1,000 in Darby's draft on ourselves, which in like manner we pass to your own credit, together with £374 8 9, received for your account from Mr. Geo. Moore, of Trieste, being as he informs us the nett proceeds of the hides and teas ex Robert Adams, after deducting advances, and for which we credit you as cash from the 12th December.

Messrs. Archias & Co., of Marseilles, having enquired of us under date 9th instant, whether you had opened a credit in their favor upon us, to make advances on shipments to your address, as you had mentioned to them your intention of doing, and adding that they did so in consequence of the prospect they then had of influencing a consignment to you, we told them by return of post, that although we should be ready at any time to confirm any such arrangement, and were yet without your authority to that effect, they might consider themselves at liberty to value upon us for your account to the extent of two thousand pounds sterling, on handing us the customary shipping documents, (as we should have been sorry to see such business pass your door for want of the facilities in question,) expressing a hope at the same time, that they would only grant such advances on property, the sale of

which they felt assured, by their latest advices, would be of ready sale in the New York market; all which we trust will meet your entire approbation.

We should have extended the credit in question to the former sum of £3,000, but that for the present we conceived you would be better pleased with the lesser amounts; you have, however, only to let us know your wishes in this respect to insure our conformity thereto. We are confirmed, too, in some measure, in this view of the business, by what you now write about advances to our friends, Messrs. Thos. Ashmore & Co., and whereto we shall get them to conform in the shipments they tell us they intend making to you in the course of next month, to the extent of about £1,200 sterling. Always very much at your command, we remain, very truly, sir, your obedient humble servants,

BELL & GRANT.

The account in the name of the defendant in the witness's books was entered in that form by the direction of G. W. Bruen. The defendant never looked into the books, or knew any thing about the account.

The general state of the witness' accounts with the plaintiffs was well known to them and to him; they were rendered every six months, and they and he knew the balance.

Mr. Grant, upon his arrival in June, 1837, claimed to be a creditor of witness to a large amount.

He, witness, did not know that G. W. Bruen or H. Bruen ever knew about his accounts with the plaintiffs, although he had no doubt that G. W. Bruen believed that plaintiffs were his creditors. My failure was notorious.

He never saw Grant and the defendant together.

G. W. Bruen had no intercourse with the defendant in 1837.

The plaintiffs' counsel also produced and read the following letter, admitted to be in the handwriting of the defendant.

BRIGHTON HOUSE, 22*d Nov.*, 1837.

ROBERT GRANT, ESQ.

MY DEAR SIR: Will you be good enough to inform me when I may expect to see the letter of credit which you stated I had given to your house in favor of Mr. Thorn; you will please let me see the original, not a copy; the thing has so utterly passed from my mind, I can never believe it until I see my own signature. I sent your letter to Mr. Coddington at Rahway. About your change, I saw at the time he handed you a two dollar bill; I presume he has sent you the other dollar.

Your most obedient servant,

M. BRUEN.

And the counsel for the plaintiffs further gave in evidence a letter, addressed by Robert Grant, one of the plaintiffs, to the defendant, in the words following:

NEW YORK, *November 26th*, 1839.

MATTHIAS BRUEN, ESQ.

DEAR SIR: I am sorry that I must apply to you for the balance due to my London firm, Bell and Grant, by Mr. W. H. Thorn.

Previous to Mr. Thorn's departure for Europe, I furnished him with a copy of the account, to which I have his signature, as examined and found correct, shewing the amount due to Bell & Grant to be £6,354 3 9 sterling, interest included to 31st December, 1838, subject to an addition of £1,383 11 3 sterling, should Messrs. Crooke, Brothers & Co., Malaga, succeed in establishing, as they are now attempting to do, that amount for which Mr. Thorn stands credited in the above mentioned account. Any further explanation you may require I am ready to give, but I must request your attention in the mean while to the above claim, which I make under your letter of guarantee to Bell & Grant, for any credits they might open in favor of Mr. Thorn, and of which letter I sent you a copy at your request last February, 1838, twelve months.

I shall be obliged by your acquainting me, as early as may be convenient, of your intentions in regard to the above.

And I remain, dear sir, your ob't serv't,

ROB. GRANT.

The plaintiffs' counsel also called and examined, as a witness for the plaintiffs, William S. Wilson, who testified that the firm of Wilson & Brown, of which he was a member, received from Mr. Grant the principal part of the goods mentioned in the inventory before produced, which they sold; the rest of the goods in the invoice had been sold for R. H. Greene's note, which was handed us instead of the goods. The proceeds we remitted to the plaintiffs. Among the remittances was a bill for £2,500, which also included the proceeds of some Samos wine, received from the defendant by Mr. Grant, and not contained in the inventory.

The news of the failure of the plaintiffs reached here shortly after the arrival of Mr. Grant.

The witness knew that Mr. Grant went to Perth Amboy to see the defendant.

And the counsel for the plaintiffs offered to read from the depositions of Oswald Alexander Schenck the following further interrogatory and answer; to which answer, and every part thereof, the counsel for the defendant objected, as not admissible or competent evidence; but the court overruled the objection, and allowed the same to be read, solely to shew that the plaintiffs acted on the guaranty of the defendant; to which the counsel for the defendant excepted, and the same were read, as follows:

Seventh. Do you know, or are there any facts in your knowledge tending to shew that any of the above credits were given in reliance of any guaranty for W. H. Thorne's credits on Bell & Grant? If yea, detail all your knowledge and all such facts, and on whose guaranty.

To the seventh interrogatory the said deponent saith, that, from previous to the year one thousand eight hundred and thirty-one to the time of his quitting the employment of the said Bell & Grant, deponent sat in the same room or counting house in which both the said James Christian, Clement Bell, and Robert Grant, were in the habit of sitting and transacting their business, and in which also sat the father of this deponent, who was, and had been for many years, the cashier of the said Bell & Grant, and greatly in their confidence; and deponent was well acquainted with the daily mercantile operations of the said Bell & Grant; and deponent saith, that, as well from his perusal, at the time, of the letters which were received and written by the said Bell & Grant on the subject of their account and transactions with the said W. H. Thorn, as also from various conversations which deponent had with said James Christian, Clement Bell, and Robert Grant, and also heard between them, and also between them and deponent's said father, on the subject of the account of and transactions with the said W. H. Thorn, and the several bills drawn upon them in respect thereof, and the directions which this deponent *either* himself received or heard given to his said father, with regard to such bills, deponent has no doubt whatever but that the credits given to the said La Cave & Echicopar, R. Anderson & Co., and Amie, Zipcey & Co., as enquired of deponent in this interrogatory, were given by the said Bell & Grant in full reliance on a letter of guarantee which they have received from the said Matthias Bruen, of the twenty-third of April, one thousand eight hundred and thirty-one; and that, without such letter of guarantee, the said Bell & Grant would not have given the said credits, or any of them.

And the counsel for the defendant read the answer of the said O. A. Schenck to the following interrogatory, administered to him by way of cross examination, under the commission hereinbefore mentioned; which question and answer were as follows:

Tenth cross interrogatory. Are you aware, that, in or about the year 1836, the defendant was in London, and saw repeatedly the plaintiffs, or one of them? Was any notice then given to him by the said plaintiffs, so far as you know, that they then held or relied upon any guarantee of his for W. H. Thorn?

To the tenth cross interrogatory deponent saith, that, in or about the year one thousand eight hundred and thirty-six, the defendant was in London, and saw the plaintiffs several times; but whether any notice was or was not then given to him, by the said plaintiffs, that they held or relied upon any guarantee of his for W. H. Thorn, deponent does not know.

The counsel for the defendant also proved and read the following letter from W. H. Thorne to the plaintiffs:

NEW YORK, 8 *March*, 1837.

GENTLEMEN: Above is a copy of my last, since when I have received your letter of the 19th Jan'y, by which I am happy to find that

Mess. Freeley, Goshen, had paid you the balance of the first bill, for £3,000.

By this packet I sent Mess. Littledale & Co., for acceptance, Wright & Co.'s bill at 60 days on Mr. Wright - - - £2,000
" " " - - - 1,500

In all - - - - - - £3,500

Which you will place to my credit, together with the enclosed bill, drawn by Edward Peel on Wm. Beavais, for £70. As this remittance will very nearly balance my old account, I have prevailed on Mr. Darby to open me a credit similar to the last, and on the same conditions, for £3,500, which shall be punctually provided for on the 8 May next, if not sooner.

Money continues as scarce as ever, and very little business doing.

I remain, &c.,

W. H. THORN.

The counsel of the defendant also produced and read twenty-seven letters from the plaintiffs to the defendant during the years 1831, 1832, 1833, 1834, 1835, and 1837; the said letters were on the subject of particular adventures pending on account of the defendant; the letters were part of a series, but not all the letters of the series; the letters treated only of the particular subjects occasioning the same; the letters produced contained no reference to the business of Thorne, nor to the guaranty of the defendant. The first of the letters produced was dated June 22, 1831, and was followed by letters dated July 14, 1831, July 22, 1831.

The letter of June 22nd, 1831, was as follows:

"Duplicate."

LONDON, *22nd June*, 1831.

MATTHIAS BRUEN, esq., *New York*.

DEAR SIR: Referring to the above copy, and without any of your favors, we have only to confirm the same.

We have not yet been able to complete the quantity of quicksilver wanted, but we still expect to do so at not exceeding 1 10 per lb.

We remain, very truly, BELL & GRANT.

Upon reading of which the plaintiffs' counsel called for the production of the letter therein referred to, but the defendant's counsel did not produce the same.

The defendant's counsel also proved and read the following letters:

LONDON, 29 *June*, 1837.

Mr. W. H. THORN, *New York*.

SIR: We have nothing to acknowledge from you since we wrote to you on the 14th inst., as per copy already sent, and when we mentioned the sale of the 60 bales of cotton ex "Mary," via Pernambuco, at Liverpool, at 8 c. lb.; we now, therefore, wait upon you with account

sale of the same, producing £270 7 11 nett, in cash, the 22 October next, together with an account of the drafts passed upon us, on account of the cotton shipped by Mess. Femice & Mansfield, for your account, and that of Mr. James Devereux, of Philadelphia, for your half balance, whereof we debit you in £132 13 8, which, on examination, we trust you will find correct. We also enclose an open copy of a letter for you from Mess. Bell, De Yough & Co., of Leghorn, advising the sale of the pepper ex George.

It is with much satisfaction we are able to announce to you, that neither that house, or the one conducted by George Moore, of Trieste, will be inconvenienced by what has recently occurred to us; on the contrary, they are both ready to receive any consignments, or execute any orders which may be committed to their charge.

Recommending them, therefore, to your kind recollection, we remain, very respectfully, sir, your obedient humble servants,

BELL & GRANT.

P. S. We have just seen the Rev. Dr. Whitehouse, who informs us that Mr. M. Bruen, with Mrs. W., are arrived at Southampton, and are now travelling through the west of England, preparatory to returning to New York, by either the packet of the 8th or 16th proximo from Liverpool.

NEW YORK, *7th April*, 1831.

Messrs. BELL & GRANT.

GENTLEMEN: Since I had the pleasure of writing to you on the 31st March, I have received your regarded lines of the 23d February, by which I am happy to learn that there was a prospect of placing the Cuba tobacco, on arrival.

I mentioned to Mr. Darby that I might have occasion to call on you for another credit, in favor of my friends in Messina, for £2,000, or £2,500; and should I conclude to do any thing, the insurance shall be committed to you.

In my last I proposed to effect the insurance here, and deposit the policy with Mr. Darby. Should this not meet your approbation, I would be willing to go further, and allow you a commission of 1½ per cent. instead of 1 per cent., in all bills that may be drawn on you for my account, in cases where you have not funds in your hands to meet said bills. I hope you will accede to these terms, as it will be the means of making a great saving to me in the course of a year.

I remain, &c.,

W. H. THORN.

NEW YORK, *May 23d*, 1831.

Messrs. BELL & GRANT.

GENTLEMEN: Since I wrote you on the 9th inst., by the James and Henry Cumming, I have been favored with your esteemed lines of the 6th and 14th April. I am pleased to find that you had made a further sale of my ashes, at 35s. for firsts, and 33s. for seconds, and I hope

your next will advise the sale of the remainder, and also of the Cuba tobacco, per Freak, which I am anxious to have closed. Messrs. Archias & Co., in acknowledging the receipt of my letter of 24th Feb., containing the credit of £2,000, observes, "The conditions we have carefully perused and noted, and said credit have since been confirmed by Messrs. Bell & Grant, who have stipulated, as well as you, for the insurance to be committed to their care. We must here observe, that this will be an obstacle to us at times, as the premium is generally much higher in London than here; it also fluctuates, in proportion as a good or bad opinion may attach to a vessel, which would render it almost impossible to calculate the charges attending a shipment with certainty."

This is what I anticipated, and I beg you will alter the conditions of the credit, so as to allow them to attend to the insurance when they cannot prevail on the shippers to have it done in London.

The Autumn sailed on the 16th instant for Matanzas, to load a full cargo of sugar for Leghorn, to the address of Messrs. Bell, De Yough & Co. She is a fine coppered brig, and will carry full 1,200 boxes, of which three-fourths will be for my account, and one-fourth for account of Stouder & Co. I gave the order some time ago, and limited the price to 5½ a 10, but I think they will have been purchased at 5 a 8, as the market was full of sugars, and no vessel to take them away.

I remain, &c.,

W. H. THORN.

LONDON, 28*th June*, 1831.

W. H. THORN, esq.

SIR: Your letter of the 21st ultimo has reached us since we addressed you on the , as per copy above, and by which you will learn that Messrs. Bell, De Yough & Co., having drawn upon us for the cost of the rags by the "Hope," we had already insured them here. We observe that, in conjunction with Messrs. Francia, Thompson & Co., you had engaged the brig "Napoleon" to proceed to Matanzas, and there load a cargo of coffee for Leghorn, to the address of Messrs. Bell, De Yough & Co. We hope the adventure will turn out well; but the cost at Matanzas ought to be moderate, for our European markets are no longer as lively for this article as they were some time ago.

We have sold the remaining part of your pearl ashes by the "Sovereign" at 32, duty paid, a very miserable price; but our market is so heavy, and little likely to recover, we have thought it most for your interest to close.

We remain your obedient servants,

BELL & GRANT.

NEW YORK, 25*th November*, 1837.

MATTHIAS BRUEN, esq.

DEAR SIR: In reply to your favor of the 22nd, received yesterday, I think that, in six weeks at farthest from this time, I may have the copy I wrote for, of your guarantee in the business of Mr. Thorn; but it

was only a copy I asked for, and therefore cannot expect to receive the document itself, unless I apply for it again. I have, however, seen the original so often, as to be able to assure you once more that it is under your own sign proper.

I have not heard from the hotel keeper at Rahway; perhaps, if any of your people should be going that way, you will have the goodness to desire them to inquire about the dollar short given in change. Thanking you for the trouble you have already taken in this important affair, I remain, dear sir,

Very respectfully, yours,

ROB. GRANT.

The defendant also produced and proved a revocation of power of attorney, published by the defendant and Alexander M. Bruen in a newspaper in the city of New York, in the month of September, 1835; which is as follows:

Notice is hereby given, that whereas an act of Congress, passed the 15th June, 1832, authorizing the Secretary of the Treasury of the United States to compromise and settle with the trustee of the late firm of Thomas H. Smith & Son, and their sureties, and the compromise having been effected in pursuance of said act, the Secretary of the Treasury, in behalf of the United States, having relinquished all claims and demands whatsoever against Thomas H. Smith & Son, and their sureties: And whereas it became necessary, for the furtherance and settlement of the estate, that the surviving partner of the late firm of Thomas H Smith & Son should have full power and authority to manage all the affairs of the estate, and make use of the subscribers' names and powers of attorney for that purpose. This necessity having now ceased, the subscribers revoke all powers of attorney, of whatsoever nature or kind, that may have been granted, and will in future attend to the settlement of their concerns at 166 South street, New York.

M. BRUEN,
ALEXANDER M. BRUEN.

The counsel for the defendant called and examined, as a witness for the defendant, Alexander M. Bruen, who testified that the said revocation was published in September, 1835, and that there never was any joint power of attorney executed by himself and the defendant.

And the plaintiffs' counsel then called again William H. Thorn, who had been examined in detail touching the state of his assets in July, 1837, and subsequently, and who had been requested by the counsel on each side, with the said witness, William S. Willson, to examine his books of account, and make out a statement of his assets realized in and after June, 1837; and they produced a statement of amounts realized each month, a copy of which is as follows:

Assets of Wm. H. Thorn.

1837.				
June	Per cash book	- - - -		$10,706 47
July	do do	- - - -		3,440 21
August	do do	- - - -		6,432 82
September	do do	- - - -		10,385 50
October	do do	- - - -		6,497 93
November	do do	- - - -		19,369 93
December	do do	- - - -		3,965 74
		Amount carried forward	-	$60,798 60
1838.		Amount brought forward	-	60,798 60
January	do do	- - - -		1,740 37
February	do do	- - - -		13,384 16
March	do do	- - - -		6,688 11
April	do do	and Journal	- -	3,120 59
May	do do	do	- -	1,044 23
June	do do	do	- -	361 61
July	do do	do	- -	1,599 44
August	do do	do	- -	819 93
September	do do	do	- -	736 05
October	do do	do	- -	7,919 56
November	do do	do	- -	30 00
December	do do	do	- -	1,544 11
1839.				
January	do do	do	- -	26 95
February	do do	do	- -	957 01
March	do do	do	- -	495 66
April	do do	do	- -	543 08
May	do do	do	- -	353 53
				$102,165 49

And the said Thorn further testified that, deducting from the total amount of assets realized, the amount realized prior to any month, (which were paid over soon after they were got in,) the balance would shew the assets then on hand. In this manner it appeared that on the first of October, 1837, he had assets on hand, subsequently realized, to - - - - - - - - - $67,400 00

And deducting an amount of Francia, Bros. & Co., previously pledged - - - - - 9,500 00

There remained - - - - - - $57,900 00
then on hand, and afterwards realized.

That no other of his assets were specifically pledged.

The plaintiffs' counsel further produced the following letter, admitted to be in the defendant's handwriting.

PERTH AMBOY, *4th Oct.*, 1837.

MESSRS. BELL & GRANT, *at Bunker's hotel, B'way New York.*

GENT: I have just been informed that you have a guarantee under my signature for Wm. H. Thorn to any acc't, you will be good enough to furnish me with a copy.

I never recollect executing any such paper, nor have I ever supposed I was in any way or shape bound for him in any thing beyond my indorsements, which has proceeded from pure friendship.

With great respect, your most ob't serv't.

M. BRUEN.

The counsel for the plaintiffs then produced the four following accounts, marked 1, 2, 3 and 4, which by consent were laid before the jury; and the counsel for the defendant produced the following account, marked 5, which by a like consent, was also laid before the jury.

DR. *Wm. H. Thorn, of New York, in account*

		Due date.	Days.	Int'st a 5 p.c. to June 2, '37	Amount.
1837.		1836.			
Jan. 1	To balance of account furnished -	Dec. 30	153	£583 18 8	£27,861 2 5
30	" paid Frankling & Goshen balance of their account -	1837. Jan. 30	123	2 18 4	173 3
Feb. 9	" G. Amie, Zipsey & Co., drafts on ac. shipment pr Robt. Adams, and our charges on same -	April 12	51	12 4 5	1748 11
	" notarial exp'ses on bill on Frankling and Goshen for £3,000 -	Feb. 9	113	0 1 3	3 10
June 2	" balance of interest to this date at 5 p. c. per annum - -	–	–	–	436 6 6
	" commission for paying, and cash reimbursements on £173 3 0 a 1 p. c. - - -	–	–	–	1 14 6
	" postage of letters to and from New York - - -	–	–	–	4 18 6
				£599 2 8	
			Int.	to Dec. 31, '38	£30,229 5 11
1837. June 2	To balance due at the date as above	–	577	580 9 7	7,343 18 10
	" G. F. Darby's draft of 8 March on Mr. Thorn's ac. - -	June 17	562	269 9 0	3,500
	" amount due on shipment of cotton from Pernambuco, as per ac. ren'd - - -	" 19	560	10 4 1	132 13 8
	" balance of interest - -	–	–	–	459 14 4
				£860 2 8	
					£11,436 6 10
1838. Dec. 31	To balance bro't down due this day	–	–	–	£5,673 2 3
	" interest to Dec. 12, '44, 5 y. 11 m. 12 days, a 5 p. c. - -	–	–	–	1,687 18 11
	" balance due Bell & Grant, cash 12th December, 1844 -	–	–	–	£7,361 1 2

current with Bell & Grant, London. Cr.

		Due date.	Days.	Int'st 5 p. c. to June 2,'37	Amount.
1837.					
Jan. 10	By cash received of Frankling & Goshen, in part of bill of £3,000	Jan. 10	143	£37 4 4	£1,900
" 19	" do of the same for the bal. of do.	" 19	134	20 4 2	1,101 7 1
" 13	" 2 bills of the same on Wright & Co., £1,000 - - -	Mar. 22	72	9 17 3	
" 13	" 2 bills of the same on Malcolm, Son & Co., £1,500 - -	" 24	70	14 7 8	2,500
Feb. 3	" remit'nce on 7 Jan. on W. Wright	April 6	57	15 12 4	2,000
" 7	" do 14 " T. Wilson & Co.	" 11	52	21 7 5	3,000
" 14	" commission on £2,800, ins'e re-credited - - -	Dec. 31	153	0 5 10	14
" 15	" his remittance of July 23 on T. W. Smith & Co. - -	April 18	45	12 6 7	2,000
" 15	" his remittance of 24 Jan'y on T. Wilson & Co. - - -	" 20	43	15 6 3	2,600
" 22	" his remittance of 31 Jan'y on T. Wilson & Co. - -	" 24	39	5 6 10	1,000
Mar. 2	" his remittance of 7 Feb'y on G. Wildes & Co. - -	May 4	29	4 15 5	1,200
" 16	" his remittance of 16 Feb'y on P. Cotesworth & Co. - -	" 18	15	3 1 11	1,500
" 25	" his remittance of 23 Feb'y on sundry - - -	" 28	5	2 14 10	4,000
April 21	" his remit'e of 8 Mar. on M. Bruen	" 5	28	0 5 4	70
	Balance of interest - -	–	–	436 6 6	
				£599 2 8	
June 2	" balance to his debit - -	–	–	–	7,343 18 10
					£30,229 5 11
1837.				Int. to Dec. 4,'38	
June 15	" remittance on Wright & Co., Liverpool - - -	1837. June 15	564	£270 8 2	£3,500
	" amount drawn on Crooke, Bros. & Co., Malaga, contingent; see N. B. in printed ac. - -	July 25	524	99 6 10	1,383 11 3
Aug. 23	" balance of sales of wool, as per ac. ren'd - - -	1838. Nov. 14	47	0 2 11	23 3 10
	" Net proceeds of Samos wine -	April 15	260	30 10 5	856 9 6
	Balance of interest column -	–		459 14 4	
				£860 2 8	
Dec. 31	" balance due Bell & Grant -	1838. Dec. 31		–	5,673 2 3
					£11,436 6 10

DR. *Wm. H. Thorn, of New York, in account*

		Due date.	Days.	Int'st @ 5 p.c. to June 2, '37	Amount.
1837.					
Jan. 1	To balance of account furnished -	Dec. 31	153	£583 18 8	£27,861 2 5
30	" paid Frakling & Goshen balance of their account -	1837. Jan. 30	123	2 18 4	173 3
Feb. 9	" G. Amie, Zipcey & Co., drafts on ac. shipment pr Robt. Adams, and our charges on same -	April 12	51	12 4 5	1748 11
	" notarial exp'nses on bill on Frakling and Goshen for £3,000 -	Feb. 9	113	0 1 3	3 10
June 2	" balance of interest to this date at 5 p. c. per annum - -	–	–	–	436 6 6
	" commission for paying, and cash reimbursements on £173 3 0 @ 1 p. c. - - -	–	–	–	1 14 6
	" postage of letters to and from New York - - -	–	–	–	4 18 6
				£599 2 8	
					£30,229 5 11
1837.			Int. to 31 Dec., '38		
June 2	To balance due at this date as above	–	577	580 9 7	7,343 18 10
	" amount due on shipment of cotton from Pernambuco, as per ac. ren'd - - -	June 19	560	10 4 1	132 13 8
	" balance of interest - -	–	–	–	190 5 4
				590 13 8	
					£7,666 17 10
1838.					
Dec. 31	To balance bro't down due this day	–	–	–	£1,903 12 3
	" interest to Dec. 12, '44, 5 y. 11 m. 12 days, @ 5 p. c. - -	–	–	–	566 2 7
	" balance due Bell & Grant, cash 12th December, 1844 -	–	–	–	£2,469 14 10

current with Bell & Grant, of London. CR.

		Due date.	Days.	Inte'st 5 p.c. to June 2,'37	Amount.
1837.					
Jan. 10	By cash received of Frakling & Goshen, in part of bill of £3,000	Jan. 10	143	£37 4 4	£1,900
19	" do of the same for balance of do	19	134	20 4 2	1,101 7 1
13	" 2 bills of the same on Wright & Co., £1,000 - - -	Mar. 22	72	9 17 3	
	" 2 bills of the same on Malcolm & Co., 1.500 - - -	24	70	14 7 8	2,500
Feb. 3	" remit'nce of 7 Jan. on W. Wright	April 6	57	15 12 4	2,000
7	" do 14 " T. Wilson & Co.	" 11	52	21 7 5	3,000
14	" com's on £2,800 ins'e re-credited	Dec. 31	153	0 5 10	14
15	" his remittance of 23d July on T. W. Smith & Co. - -	April 18	45	12 6 7	2,000
15	" his remittance of 24 Jan'y on T. Wilson & Co. - -	" 20	43	15 6 3	2,600
Mar. 2	" his remittance of 7 Feb'y on G. Wildes & Co. - -	May 4	29	4 15 5	1,200
Feb. 22	" his remittance of 31 Jan'y on T. Wilson & Co. - -	April 24	39	5 6 10	1,090
Mar. 16	" his remittance of 16 Feb'y on P. Cotesworth & Co. - -	May 18	15	3 1 11	1,500
25	" his remittance of 23 Feb'y on sundry - - -	" 28	5	2 14 10	4,000
April 21	" his remittance of 8 Mar. on M. Bruen - - -	" 5	28	0 5 4	70
	" balance of interest - -	–	–	436 6 6	
				£599 2 8	
June 2	" balance to his debit this day -	–	–	–	7,343 18 10
					£30,229 5 11
1837.			Int. to 31 Dec. '38		
June 15	" remittance on Wright & Co., of Liverpool - - -	1837. June 15	564	270 8 2	3,500
	" amt. drawn on Crooke, Bros. & Co., Malaga, (contingent on				
1838.	N. B. in printed ac.) - -	July 25	524	99 6 10	1,383 11 3
Aug. 23	" balance of sales wool, as per ac. ren'd - - - -	1838. Nov. 4	47	0 2 11	23 3 10
	" nett proceeds of Samos wine -	April 15	260	30 10 5	856 9 6
	" balance of int. column - -	–	–	190 5 4	
				590 13 8	
		1838.			
Dec. 31	" balance due Bell & Grant -	Dec. 31	–	–	1,903 13 3
					£7,666 17 10

Wm. H. Thorn, esq., of New York, (for bills for £4,000, of 16th Feb'y, 1837,) in account current with Bell & Grant, of London.

Dr.			
To G. F. Darby's bills for this sum, due 18th May, 1837	–	£4,000	0 0
Interest to Dec'r 31, 1838, 1 y. 7 ms. and 13 ds., *a* 5 0-0 -	–	323	15 10
Banking commission, 1 0-0 - - - -	–	40	0 0
Cash, 31st Dec'r, 1838 - - -	–	£4,363	15 10
Cr.			
By remittances of Wilson & Brown, on ac't goods made over as security, due April 15 - - £2,500 0 0			
Deduct for proceeds Samos wine - - 849 8 10			
Due April 15, 1838 - - - 1,650 11 2			
Interest to 31st Dec'r, 1838, 8 ms. and 16 ds., *a* 5 0-0 - - - - 51 8 1	£1,701 19 3		
By R. H. Green's note, due July 6, 1838, for $1,523 47, at 5 0-0 exchange on London 326 9 2			
Int. to 31st Dec'r, 1838, 5 ms. 21 ds., 5 0-0 5 13 8	332 2 10		
By advance and charges on Sherry wine, $5,380 04, due Aug. 31st, 1838 - - 1,120 16 10			
Int. to 31st Dec'r, 4 ms., *a* 5 0-0 - - 18 13 7	1,139 10 5		
By remittance of Wilson & Brown, for proceeds of balance of goods made over as security, cash. Feb'y 7th, 1838 - - 513 16 0			
Int. to Dec'r 31st, 10 ms. 24 ds., *a* 5 0-0 - 23 1 11	536 17 11		
By debenture on paper, $4,780 57, cash 10th July, 1839, *a* 1 1-10 0-0 exchange - 977 17 10			
Discount, to Dec'r 31st, 1838, 6 ms. 10 ds. *a* 5 0-0 - - - - - 25 15 5	951 12 5		
		4,662	2 10
Balance in favor W. H. Thorn, cash, Dec'r 31st, 1838 -	–	£298	7 0

DR. *William H. Thorn, esq., New York, for Darby bills of £3,500, of 8th March, 1837, in account with Bell & Grant, London.* CR.

1837.		Days.	Int. to 31st Dec'r, 1838	Principal.	1839.		Days.		Principal.
To G. F. Darby's draft of 8 March, on Mr. Thorn's account - - -	1837. June 17	562	£269 9 0	£3,500 0 0	By drawback on paper -	1839. July 10	191	£25 11 7	£977 7 10
To discount in red, pr. contra	–	–	25 11 7	295 0 7	By balance of interest column - - -	–	–	295 0 7	
Bal of int. ac't -	–	–	£295 0 7	£3,795 0 7				£295 0 7	
					By balance due to Bell & Grant - - -	–	–	–	2,817 12 9
									£3,795 0 7
1838. Dec. 31 To balance brought down, due this date -				£2,817 12 9					
To interest thereon to the 12th Dec'r, 1844, 5 ys. 11 ms. 12 ds., *a* 5 0-0 - - -				838 7 1					
Due Bell & Grant, as cash, 12th Dec'r, 1844				£3,655 19 10					

Bruen vs. Bell et al.

1/2. 85.

Statement of W. H. Thorn's account with Bell & Grant

To balance due them as per account current -		£5,710 13 1
From which must be deducted—		
G. F. Darby's bill, drawn under the guaranty of G. W. Bruen - - -	£3,500 0 0	
And interest thereon from June 2d, 1837, to Dec. 31st, 1838 -	269 9 0	
		3,769 9 0
Balance due, Dec'r 31, 1838 -		£1,941 4 1
By drawback on paper retained by Mr. Grant, $4,780 59, a 10 per cent., due July 10, 1839 - -		977 7 10
		£963 16 3
Interest on £977 7 10 from Dec'r 31, 1838, to July 10, 1839 - - - - -		25 11 2
Balance due Bell & Grant, Dec. 31, 1838 - -		£989 7 5
Interest thereon from Dec'r 31, 1838, to Dec'r 12, 1844 - - - - - -		293 4 4
Balance due B. & G., due Dec'r 12, 1844 -		£1,292 11 9

The evidence upon both sides being closed, the cause was summed up by the counsel of the respective parties; whereupon, the plaintiffs' counsel presented to the court certain propositions, on which he requested the charge of the court, as follows:

I. The guaranty of April 23, 1831, was a continuing guaranty for a course of future dealing, without limit of time, place, or amount.

II. It could be revoked by defendant as to all subsequent transactions, and it endured until revocation and notice, like a general agency or general partnership.

III. It was not limited to any peculiar mode of conducting business, so long as Mr. Thorn conducted his business in any usual mercantile manner.

IV. The business of Mr. Thorn was set up and conducted for the benefit of himself one-third, and two-thirds for the Messrs. Bruens; and the interest, which was not to go to Thorne, was intended for G. W. & H. Bruen; and M. Bruen lent his name to cover their interest; he is therefore a partner with Thorn, if the jury shall believe these facts.

V. If Mr. Bruen is thus liable to be treated as a partner with Thorn, there is nothing in the transactions of 1834 to relieve him.

VI. As a fact, there was no alteration in the business of Bell & Grant with Thorne, to affect the application of the guaranty to the new transactions.

An alteration of the business, as to insurance, being made, in London

or in New York, by Bell & Grant, or Thorne, would not defeat this guaranty.

As a fact the interest of G. W. Bruen continued until the failure; no consent of his father is shown to vary the legal position as partner between M. B. and G. W. Bruen, and consequently M. B. continues, under the guaranty, in his legal position as partner with Thorn.

VII. As to notice.

Under the circumstances, that Mr. Bruen set the house of W. H. Thorn, and lent his name thereto, and never revoked the guaranty; that Bell & Grant acted on faith of it; that M. Bruen resided in this country, and Bell & Grant in Europe, M. Bruen, and not Bell & Grant, were to be on the alert as to the responsibility of Thorn; and no notice of debt was necessary.

VIII. If M. Bruen or H. Bruen were to be deemed interested Thorn's concern, when the guaranty was given, it was their duty, on Thorn's failure, to have enquired as to his engagements with Bell & Grant; and they must take the consequences of their omission.

IX. M. Bruen is to take the consequences of forgetting his engagement of guaranty, and not Bell & Grant.

X. In fact M. Bruen, or his attorney, H. Bruen, had notice of Thorn's failure, and were in law chargeable with knowledge of the guaranty. The residence abroad of Bell & Grant threw the of enquiry on Bruen, and not of notice on Bell & Grant.

XI. In fact, Bruen had notice of everything material to his own protection.

XII. Notice was given of the debt as early as the amount could be ascertained.

And there is evidence, from the intimacy of Thorn with H. Bruen, of M. Bruen's knowledge, in Nov'r, 1837, and his *and his* previous interviews with R. Grant, from the notoriety of Bell & Grant's claim on Thorn, from which notice of debt may be inferred; and, if so, that is sufficient to warrant the recovery.

And the counsel for the defendant prayed the court to charge the jury as follows, viz:

I. The letter from the defendant to the plaintiffs, bearing date the 23d of April, 1831, was not, *per se*, a binding contract; nor does it contain a promise founded upon any legal consideration. It was but a proffer or proposition, which might be accepted or rejected by the plaintiffs at their pleasure. In order to give legal effect to the proffer it must have been accepted and acted upon by the plaintiffs; and hence their letter of the 14th of June, 1831, it is to be taken in connection with that of the defendant. The two are to be taken together and construed together; and unless the plaintiffs' letter contains a clear acceptance of the defendants' proposition, accompanied by notice that the plaintiffs would act upon it, there is no contract in law binding upon the parties.

II. The plaintiffs' letter contains no such acceptance or notice. It is a most guarded instrument, binding the plaintiffs to nothing, promising nothing.

The expressions, "We trust that Mr. Thorne, as well as your good self, will have every reason to be satisfied with the confidence which we feel a pleasure in assigning to you both," are equivocal, and without definite meaning. They amount, at most, to a mere notice that the defendant's proposition is under consideration, to be accepted or rejected, according to future circumstances; and hence the letter contains no acceptance of the defendant's offer, no notice that the plaintiffs were about to act upon it. There was, therefore, no contract between the parties binding upon either of them; and this action cannot be maintained.

III. When the plaintiffs opened the credits for Thorne specified in the declaration, if they then elected to act upon the defendant's letter, they should at that time have given him notice of their proceedings, in order that he might have had the opportunity of withdrawing his proposition, or of modifying it, according to circumstances. They gave no such notice; and hence the defendant is not chargeable upon his proposition, which was nothing until accepted and acted upon. In point of fact, the credit to Archias & Co. was opened before the guaranty was signed.

IV. The guaranty is, at all events, to be confined to dealings between Thorne and Archias & Company. His letter of the 23d of February, 1831, proposing the guaranty; that of the plaintiffs of the 22d of March, acknowledging its receipt; Thorne's letter of the 23d of April, enclosing the guaranty; his letter to Archias & Co.; the defendant's letter of the same date, and that from the plaintiffs in June thereafter, are to be taken together in this behalf, and shew clearly that no other dealings than those between Thorne and Archias & Co., at Marseilles, were contemplated or referred to by the parties. The declaration sets forth no bills drawn by that house except one for £500, bearing date the 25th October, 1834; and the accounts shew that this bill was paid.

V. The credit referred to in the defendant's letter was not unlimited in point of amount. It was clearly limited by Thorne's letter of the 23d of February, 1831, to not more than £2,000, "to be drawn for at any one time," and the credit then was to be considered "at an end until the plaintiffs' advances should be" covered by remittances from Thorne, when it was again to be renewed.

If this limitation had been observed the defendant could neve have been liable for more than £2,000; for Thorne's credit was to end until the previous advances were covered by remittances from America.

The defendant could not have intended to say that, in consideration of the obligation the plaintiffs had laid him under by granting to Thorne a credit of £2,000 with Archias & Co., that therefore he was ready to guaranty all other credits of Thorne, in all parts of the earth, and for any amount the plaintiffs might be pleased to grant him. The letter is to have a reasonable construction, and be confined within reasonable limits; and by the terms of the entire contract the defendant was not, at any one time, to be liable beyond the sum of £2,000.

VI. Neither was the credit unlimited in point of duration. It was to be acted upon within a reasonable time, and as the plaintiffs opened new

credits for Thorne, with distant ports, such as Smyrna and Gibraltar, they were, at all events, bound to give the defendant notice of such credits; and having neglected to do so, the defendant is discharged.

VII. The credits contemplated in the letter of the 23d of April, were only such as the plaintiffs might open for him with other houses in the Mediterranean; the letter did not contemplate any direct dealings between Thorne and the plaintiffs, nor did it cover any such credits; the contemplated business was not to rest solely upon the credit of Mathias Bruen, nor even upon his credit united with that of Thorne; but Bell and Grant were to have invoice and bill of lading in all cases of advance, while insurance was to be effected in London.

The bills for £4,000 and £3,500 were without this security; and the defendant could not therefore be bound for them; as soon as Thorne obtained the guaranty he proposed to vary the conditions as to insurance, and in October, 1834, it was given up; they could not change it without notice to defendant, who gave his guaranty upon the conditions prescribed in Thorne's first letter; and the bills drawn by Darby, therefore, do not come within the guaranty, and are to be excluded from the account.

VIII. The Darby bills were not drawn under the guaranty at all, nor were they delivered to Thorne thereon; the declaration so avers; they were sold and the proceeds loaned to him by Darby; again they were drawn under a specific guaranty executed by George W. Bruen; this is proved by Thorne, and admitted by Darby; and these bills are to be stricken from the account.

IX. The defendant was entitled to reasonable notice of Thorne's default; the plaintiff arrived in New York in June, 1837, obtained from Thorne a large amount of assets, but never made a demand upon the defendant until November, 1839, two years and five months after the default; and this was such negligence as to discharge the defendant, as matter of law; if, however, we are to suppose a notice of claim from Grant as early as November, 1837, still that delay, under the circumstances of this case, was unreasonable; if given in time, Thorne would have secured Bruen, having then the means and the disposition to do so; the laches of the plaintiffs in this particular is fatal to the plaintiffs' claim, and if the defendant suffered injury thereby, he is discharged.

X. The credits were suspended in 1834, and afterwards renewed; the defendant should have had notice of this, as his rights and liabilities were thereby varied and prejudiced; not having had such notice, he is discharged.

XI. The credits given to Thorne in March, 1837, by Darby, were rash and unwarrantable, and contrary to his instructions; they changed his condition, increased the defendant's risk, deprived him of power to pay the antecedent debts guaranteed by the defendant; he is therefore discharged. The defendant resides in America, and the loan was made here; it was made in dangerous and difficult times; and he was, at all events, entitled to notice.

XII. Payments should be applied for the benefit of the surety, or at

all events not to his prejudice; Darby's bills cannot prejudice the antecedent credits, but must stand by themselves in a separate account.

XIII. The opening of credits, the drawing and payment of bills, cannot be proved by the letters of the correspondents; they should have been examined under commissions.

XIV. Plaintiffs should have sued Thorne in July, 1837, and pursued their remedy against him to a legal satisfaction; not having done so, they cannot charge the defendant.

XV. The correspondence read by the plaintiffs is improper as evidence to charge the defendant; the assertions and acts of the parties to the letters are *res inter alios*, which cannot bind the defendant, or charge him with notice.

XVI. The defendant was entitled to notice of the credits opened in various parts of the world, under the guaranty, within a reasonable time after they were opened; and as it was not given, he is discharged. And this notice is in addition to that signifying the acceptance of the guaranty; the credits ran through a space of seven years, and those of 1834, 1836, and 1837, cannot be referred to the guaranty without notice; if Mr. Bruen had been informed of the new credits, he would have recalled his letter.

XVII. The defendant did not have notice until after a lapse of seven years that his guaranty had been acted upon; and the want of it operates as a discharge.

XVIII The bills of Francia & Co. were not drawn under the plaintiffs' credit, but under a credit opened by Darby; nor are they covered by it.

The plaintiffs are not entitled to recover under this declaration. First, there is a variance.

It is averred that the plaintiffs gave the defendant notice that they had received the guaranty, and should "confide" therein; the proof to support it is the letter, which does not support the averment, nor agree with it. Secondly. The declaration no consideration to uphold the promise made in April, 1831, that is, no consideration for the promise at the time it was made; as stated in the declaration, it was a nudam factum. The only consideration stated has no connection with the original promise.

It might possibly be good to uphold the promise alleged to have been made on the 31st December, 1838, provided that were an express promise proved at the trial; it was not proved, and it is not a promise raised by legal presumption.

The plaintiffs are bound to prove, under their declaration, that their letter to the defendant was received by him; and further, as matter of fact, that they had received his guaranty, and would act upon it; there is no such proof to sustain the pleading.

The putting of the plaintiffs' letter to the defendant into the letter bag of the ship President, is no proof of its reception; nor is it proved by Darby.

It was never answered, although containing matters extrinsic, requir-

ing an answer; and the plaintiffs, although the materiality of the delivery was well known to them, never made any inquiry after it.

The duty of clearly proving such delivery devolves upon the plaintiffs; it is not like the case of a bill of exchange, dishonored; where the law has fixed the amount of diligence required; but it is a part of the contract. The letter of April, 1831, is nothing without that of June, 1831; and the plaintiffs must prove both in order to justify a recovery; the copy proved by the commission is not the best evidence, it is merely a copy of a copy; the letter book should have been produced, and the reason assigned for not producing it is insufficient.

The plaintiffs must shew that they confided in the guaranty, and acted upon it; and that the various credits were given, and the bills paid upon the faith of the guaranty; in point of fact, the granting of the first credit to Archias preceded guaranty by a month.

They must prove the promise laid in the last page of the declaration, as of the 30th of December, 1838, or the action cannot be sustained.

The plaintiffs were bound, within a reasonable time after they had ceased to open credits for W. H. Thorne under the guaranty, to give the defendant notice of the fact of their having a claim against him under the guaranty, although the amount of such claim had not then been ascertained.

The plaintiffs were bound, within a reasonable time after they had ceased to open credits for W. H. Thorne under the guaranty, to ascertain and adjust their accounts with Thorne as to credits opened under the guaranty, and to give the defendant notice thereof.

The ascertaining and adjusting such account on 31st December, 1838, and not previously, was not, under the circumstances of this case, doing the same within a reasonable time.

These instructions the court refused to give as prayed; to which decision and refusal the defendant's counsel excepted; and the court charged the jury as follows:

1. The declaration sets forth the undertaking of the defendant, and avers that the plaintiffs notified him of its receipt, and that they should confide in it; and further avers, that relying on it, they acted and continued to act thereon; this is alleging a sufficient consideration to support the action.

2. The contract was consummated when the plaintiffs accepted and acted under the guaranty; the proof adduced to show they accepted it is no variance from the allegations in the declaration. The plantiffs' letter of the 14th June, 1831, to the defendant, being a sufficiently explicit and certain notice that the guaranty was received and confided in by them.

3. The subsequent assumption and payment of bills under the direction of Thorne, is pertinent and legal evidence to prove the plaintiffs acted under the guaranty.

4 Whether notice of the assumption of guaranty was given to the defendant, is matter of fact for the jury to find. The plaintiffs need not prove an actual delivery of notice to the defendant; they must

prove facts and circumstances from which its reception by him is to be reasonably presumed and inferred.

5. The guaranty as expounded by the Supreme Court, covers the credit with Archias & Co., of £2,000, then already granted, as well as any and every other credit the plaintiffs might open in favor of Wm. H. Thorne, with any and every other person. The Supreme Court recognises bills drawn by La Cave & Echicopar, R. Anderson & Co., Archias & Co., and Amie, Zipcey & Co., as embraced within the guaranty.

6. The doctrine necessarily includes the bills drawn by Darby; these credits falling within the letter of the guaranty as expounded by the Supreme Court, (being to a person other than Archias & Co., the court seemingly only forbearing to say so in the decision, because "no argument was founded on such an assumption."

7. These bills being drawn and accepted and paid by the plaintiffs, become a credit in favor of Thorne within the guaranty, although the drawer sold them in the market and delivered the proceeds to Thorne, instead of passing over the bills to him. Unless the jury find the credit was given in exclusion of the protection of the guaranty.

8. The guaranty was unlimited as to time, amount, or persons, and continued in force until notice to the plaintiffs of the failure of Thorne, and the coming in and closing up of the dependencies of his then credits, unless sooner revoked by the defendant.

9. The plaintiffs were not bound, during the continuance of the guaranty, to give the defendant notice of the opening of new credits, or the renewal of former ones, in favor of Thorne, or of successive credits or transactions under it.

10. The plaintiffs were not bound in law to give the defendant notice of the default of Thorne, and of their claim under the guaranty, before the statement of their accounts; after that, defendant is entitled to notice of Thorne's default, and of claim against defendant within a reasonable time. The notice need not be in writing, or proved by positive proof. The jury may infer it from the facts and circumstances in evidence. Thorne appears to have failed in 1837; there were bills outstanding, not falling due in London until the middle of August. When these bills were paid, then the plaintiffs' claim upon Thorne under the credits could be ascertained, so as to be sued; at this period it became the duty of the plaintiffs within a reasonable time, in view of the residences of the respective parties, to give notice to the defendant; and the plaintiffs are bound to satisfy the jury that, within a reasonable time after this, the defendant had notice of the plaintiffs' claim under the guaranty.

11. The defendant is not discharged from his liability on proof, that before notice given him of Thorne's default, and after Thorne's failure and knowledge of it by the plaintiffs, Thorne had means sufficient to satisfy the debt or indemnify the defendant, unless some deception or concealment was used by them in this behalf.

12. The credits renewed or opened anew by the plaintiffs in the

fall of 1834, in favor of Thorne, with Archias & Co., R. Anderson & Co., and Francia, Brothers, were not inconsistent with, or at variance from the guaranty, or a diminution of the defendant's security thereunder, and were fairly within its scope, and accordingly covered by the guaranty.

13. The restriction or forbearance of credits in favor of Thorne by plaintiffs in the spring of 1834, did not amount in presumption of law to an abandonment or desertion by them of the guaranty as to continuing and after transactions. It is a question of fact for the jury to decide, whether or no the plaintiffs intended them to terminate their dealings under the guaranty.

14. The liability of the defendant under the guaranty was not varied by the arrangement between the plaintiffs and Thorne, that bills of lading should accompany bills drawn by shippers for acceptance, that insurance on the merchandise should be made in London.

15. The letters between the plaintiffs and Thorne and Darby, and between either of these parties and the drawers of the bills mentioned in the declaration, in respect to these credits, is competent evidence to shew that the plaintiffs confided in the guaranty, and acted under it.

16. The plaintiffs could appropriate on their general account any payments by Thorne, not derived from merchandise pledged to meet bills drawn against it, unless such payments were specifically applied by Thorne at the time of remittance; and the general rule is, that they be credited in order of payment to debts then subsisting.

17. If no appropriation was made by the parties at the time of payment, defendant is now entitled to have them applied in extinguishment of his liability as surety.

Unto which charge, in every particular, the defendant's counsel then *had* there excepted; and thereupon the jurors of the jury aforesaid found that the defendant did undertake, &c.; and they assessed the damages, &c., at twenty-nine thousand seven hundred and seventy-one dollars and six cents.

And because the said several matters, so given in evidence and insisted on by the parties aforesaid, and the said charge and decisions of the said judge, and the said exceptions taken to the same, do not appear by the record of the verdict aforesaid, the said defendant hath caused the same to be written in this bill of exceptions, to be annexed to such record, and hath prayed the said judge to set his hand and seal to the same.

Whereupon the said judge hath, according to the form of the statute, set his hand and seal hereto, this thirteenth day of December, in the year eighteen hundred and forty-four.

SAML. R. BETTS.

Filed March 12th, 1846.

Filed 22d June, 1846.